

APPELLATE COURT NO. 71595

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS
AT AUSTIN

RICK ALLAN RHOADES,

Appellant

VS.

THE STATE OF TEXAS,

Appellee.

APPEAL FROM 179TH DISTRICT COURT OF HARRIS COUNTY,
TEXAS

Judge J. Michael Wilkinson Presiding

STATEMENT OF FACTS

VOLUME XXIX OF 40 VOLUMES

Marlene Swope
Official Court Reporter
301 San Jacinto
Houston, Texas 77002

FILED IN
COURT OF CRIMINAL APPEALS

MAR 5 1993

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Thomas Lowe, Clerk

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1 CAUSE NO. 612408

2 STATE OF TEXAS IN THE 179TH DISTRICT COURT
3 VS. OF

4 RICK ALLAN RHOADES HARRIS COUNTY, T E X A S
5

6 A P P E A R A N C E S:

7 For the State: Ms. Carol Davies
8 Ms. Claire Connors
Assistant District Attorneys
Harris County, Texas

9 For the Defendant: Mr. James Stafford
10 Ms. Deborah Kaiser
Attorneys at Law
11 Houston, Texas
12

13 BE IT REMEMBERED that upon this the
14 30th day of September A.D. 1992, the above
15 entitled and numbered cause came on for
16 continued trial before the Honorable J. Michael
17 Wilkinson, Judge of the 179th District Court of
18 Harris County, Texas, and a jury; and the State
19 appearing by counsel and the Defendant appearing
20 in person and by counsel, the following
21 proceedings were had, viz:
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(Out of the presence of the jury).

THE COURT: You have no objection to the witness Monica Thompson sitting in on the rest of this trial; correct?

MR. STAFFORD: Correct.

Judge, the State had certain marked photos identified yesterday for identification purposes only. I have not seen those pictures. I am assuming they are going to use them for identification purposes by the deceased's father.

THE COURT: Are you talking about the photographs that the CSU man referred to?

MR. STAFFORD: Yes, sir. I have not seen those photographs.

THE COURT: They haven't been tendered.

MR. STAFFORD: They are getting ready to.

THE COURT: I don't know.

MS. DAVIES: Your Honor, if I may, Mr. Stafford has seen the photographs because they are a part of all the photographs that were shown to him prior to trial during discovery.

1 So the photographs from the morgue that were
2 identified by Officer Jordan yesterday are
3 photographs they have seen in the past.

4 THE COURT: What you are trying to do
5 is make objections to them outside the presence
6 of the jury before they are even tendered?

7 MR. STAFFORD: True.

8 MS. DAVIES: I did not tender those
9 yesterday. I brought Officer Jordan in to
10 identify the photographs to lay the groundwork
11 so that, when the time comes, if it does, that I
12 need to offer some or all of those, he has
13 already testified, he identified them as
14 accurate photographs. I do not intend to offer
15 any of those photographs with this next witness.

16 MR. STAFFORD: My point is I think
17 they are going to be attempted to be introduced
18 through the father.

19 THE COURT: I don't know.

20 MR. STAFFORD: I don't know, either.
21 But what I am saying I am trying not to have to
22 make needless -- not needless, very proper
23 objections -- not to have to bore the jury. I
24 would just as soon get it done outside the jury.

25 THE COURT: I am afraid we are going

1 to have to wait and see what it is she is going
2 to tender.

3 (Jury enters the courtroom)

4 THE COURT: Call your next witness.

5 MS. DAVIES: The State calls Holly
6 Hammond.

7 THE COURT: This witness was
8 previously sworn, ladies and gentlemen.

9 HOLLY HAMMOND
10 was called as a witness by the State and, having
11 been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. DAVIES:

14 Q. Would you, please, tell us your name?

15 A. My name is Holly A. Hammond.

16 Q. How are you employed?

17 A. I am the clinical laboratory
18 supervisor in position of manager of the
19 forensic and paternity laboratory at Baylor
20 College of Medicine.

21 Q. Is that a part of the Baylor College
22 of Medicine?

23 A. Yes, it is.

24 Q. And is there another name connected
25 with that? Is that Kleberg?

1 A. It falls under the Kleberg Center for
2 Human Genetics, yes.

3 Q. How long have you been associated with
4 that particular laboratory?

5 A. I've worked with Baylor College of
6 Medicine for approximately three and a half
7 years.

8 Q. Prior to that, where were you
9 employed?

10 A. I was employed by the Houston Police
11 Department crime laboratory as a serologist and
12 trace evidence examiner for approximately three
13 and a half years.

14 Q. What are your main responsibilities
15 and duties there at the Kleberg Center at Baylor
16 College of Medicine?

17 A. We receive blood and evidentiary
18 samples into our laboratory for the purpose of
19 doing forensic identification and for doing
20 paternity testing.

21 Q. When you say forensic identification,
22 in laymen's terms can you tell us what that
23 means?

24 A. We make an attempt to associate an
25 evidentiary stain or body fluid of some sort

1 with a known and match that to a known sample
2 using DNA typing.

3 Q. The term DNA, those initials, what
4 does that stand for?

5 A. DNA is an acronym for Deoxyribonucleic
6 Acid.

7 Q. I am sure most of us have heard that
8 term. Is DNA a part of an individual's body?

9 A. Yes, it is. DNA is the material that
10 is found in the nucleus of all the cells except
11 the red blood cells which do not have nucleus,
12 and it's a material that codes for and provides
13 information for your body to make everything
14 that it contains and for it to provide all the
15 characteristics of each person.

16 Q. You said that it is not contained in
17 red blood cells. Can you obtain DNA for your
18 identification purposes from blood, however?

19 A. Yes. Blood also contains white blood
20 cells which do have a nucleus and, therefore,
21 contain DNA.

22 Q. So other than blood, can we extract
23 DNA from say bone or other body tissues?

24 A. Yes, you can extract it from almost
25 any other body tissue or most body fluids.

1 Q. What about hair?

2 A. You can extract DNA from hair. The
3 quantity that you obtain is very small.

4 Q. So are there some fluids or tissues
5 that are more conducive in terms of ease of
6 treatment in the laboratory, more conducive to
7 extracting the DNA?

8 A. Any sample that you have, the larger
9 the quantity of that sample you have the more
10 likely you are to obtain DNA and to obtain an
11 amount of DNA that is usable for testing.

12 Q. When you say an amount that is usable
13 for testing, are there some minimum requirements
14 in terms of quantity or quality?

15 A. We require, in order to do the DNA
16 testing that we typically use, you need to have
17 DNA that is what we call high molecular weight.
18 That is it's in long strands. DNA is in very
19 long strands in its whole form, but it can be
20 broken up just by from the atmosphere or from
21 light, or just by being manipulated it can be
22 broken into smaller pieces. We need to have
23 fairly lengthy pieces to begin with in order for
24 the testing to work.

25 Q. You say lengthy pieces; and, yet, I

1 understand you are talking about from scientific
2 standpoint. Are you talking about a strand or
3 something that would be visible to the naked eye?

4 A. Well, if you could stretch the DNA
5 from one cell out into one long strand, it would
6 be approximately three feet. But you can't see
7 that because it's essentially so small in its
8 width, it's essentially one molecule or several
9 molecules of the DNA. When we talk about the
10 length of the DNA, the DNA is composed of two,
11 it's like a ladder type structure, composed of
12 the size of the ladder or backbone of the
13 sugar. And then we have what we call the bases
14 or nucleotides that form the differences in each
15 portion of the DNA molecule. And there is four
16 of those nucleotides, adenine, cytosine, guanine
17 and thymine. And those nucleotides are called
18 bases. And they form sort of like the rungs of
19 a ladder, and they are abbreviated by their
20 initials, A, C, G and T. To form a rung, the A
21 and T nucleotides always pair together for this
22 what we call double strand of DNA, that is, the
23 ladder type form. And then C and G always pair
24 together for another rung. And these can be in
25 any order with a long piece. We talk about the

1 size of DNA, the length of DNA in terms of how
2 those base pairs or how many rungs there are in
3 the ladder.

4 Q. Okay. This pairing, is that something
5 that assists you in identifying an individual
6 through this process?

7 A. Yes, it does. The double strand or
8 ladder like structure of the DNA has the
9 property that if subjected to heat or alkali you
10 can separate the two strands, that is, break the
11 base pairs apart, sort of cutting the ladder
12 down through the middle of the rungs. If you
13 do this by heat, it has the property that as you
14 cool that back down, if you cool it slowly and
15 give the molecules time to react together, they
16 will come back and allele back together exactly
17 the way they were, that is, reform the ladder in
18 just the same patteern that they were formed
19 before.

20 Q. When you say allele. I am trying to
21 understand the word you are using there, is that
22 like to return?

23 A. Yes. It's the two base pairs coming
24 back together and forming the bond back
25 together. Like bringing the two, if you split

1 the rungs of a ladder, then bringing them back
2 together and connecting them again.

3 Q. Before we get any further into the
4 process of how you go about doing this, I want
5 to be sure I understand. Is there potential for
6 identifying an individual by DNA analysis?

7 A. Yes, there is.

8 Q. In other words, if you are given a
9 sample, say, from a crime scene, you don't know
10 whose blood that is, and then you are given a
11 known sample from an individual, is there a way
12 that you can, through your scientific process,
13 compare those and determine the probability of
14 it being the same person?

15 A. We can make a comparison and decide
16 whether or not that sample could have come from
17 the known sample.

18 Q. And let's back up a little bit because
19 I didn't give you a chance to tell us about what
20 your educational background is. You mentioned
21 you worked for the HPD lab. Now, when you were
22 working with the Houston Police Department
23 laboratory, were you doing DNA analysis and
24 comparison there?

25 A. No, we did not do DNA analysis there

1 at that time.

2 Q. What were you doing in that
3 laboratory?

4 A. I was doing serology and trace
5 evidence analysis. Serology is the
6 identification and typing of blood and body
7 fluids, which DNA typing falls into, but we
8 weren't using that methodology. Trace evidence
9 is the examination of hairs, fibers, various
10 other evidence, excluding serology and drugs.

11 Q. Give the jury the benefit of your
12 educational background in the entire field of
13 serology and DNA.

14 A. I have a bachelor of science degree in
15 forensic science and a bachelor of science
16 degree in chemistry from the University of New
17 Haven in West Haven, Connecticut. I have
18 additional graduate credits in molecular biology
19 and genetics from the University of Texas Health
20 Science Center here in Houston. I have attended
21 numerous seminars on forensic science, serology
22 and DNA typing. And I worked for the Houston
23 Police Department as a serologist and trace
24 evidence examiner for three and a half years. I
25 underwent training both in our laboratory, in

1 the research laboratory at Baylor and with some
2 period of time at the FBI Academy to learn to do
3 the DNA typing and analysis. And then have
4 worked to set up the laboratory at Baylor to do
5 both paternity testing and forensic DNA typing
6 and have worked there for the past three and a
7 half years.

8 Q. You said you were involved in setting
9 up the laboratory. You're talking about the
10 Kleberg Laboratory at Baylor College?

11 A. As far as the forensic and paternity
12 laboratory, I was hired to establish that
13 laboratory at Baylor.

14 Q. So you have been working there since
15 its inception?

16 A. Yes.

17 Q. Were you involved in setting up the
18 laboratory and coming on line with the process
19 there?

20 A. Yes, I was.

21 Q. How long a process is that, to be able
22 to actually get your laboratory under way for
23 this type of testing?

24 A. Well, it can take different lengths of
25 time, depending on the laboratory and where you

1 start. Because the laboratories, the research
2 laboratories and the other diagnostic
3 laboratories at Baylor do this same type of work
4 for medical genetics research and medical
5 genetics diagnostic, all the equipment and
6 materials were in place to set it up. It was
7 just a matter of simply establishing the
8 particular application and more getting me up
9 and running than the laboratory itself.
10 Everything was in place. It took us, it was
11 approximately ten months after I started working
12 that we accepted our first case.

13 Q. Now, do you have a supervisor?

14 A. Yes, I do.

15 Q. Who is that?

16 A. My supervisor is Doctor Thomas Caskey,
17 who is the director of the Institute of
18 Molecular Genetics and the medical director of
19 the diagnostic laboratory at Baylor.

20 Q. Now, in fact, did you do some testing
21 for us in connection with this case?

22 A. Yes, I have.

23 Q. In setting up your laboratory, does
24 each laboratory have to have some kind of
25 database or base information in order to process

1 and do your comparisons?

2 A. Well, to actually just do a comparison
3 between two samples you would not have to have a
4 database. You could make a comparison between
5 the results and say this sample could not have
6 come from this person or it could have come from
7 this person. If you declare that it has been a
8 match, that is, that the sample could have come
9 from a known individual, in order to give any
10 statistics, that is, how often could this DNA
11 pattern be seen in the general population, then
12 you do have to have a database. We ran a number
13 of samples in our laboratory and collected data
14 to form a database for ourselves.

15 Q. Is that part of what you were doing
16 during that ten month period?

17 A. Yes. And even sometime after that.

18 Q. You mentioned that you did some
19 training or studying at the FBI laboratory.
20 Does your laboratory use basically the same
21 techniques and methodology that the FBI
22 laboratory does?

23 A. Yes, we do..

24 Q. Let me show you some -- I have marked,
25 contained in this envelope that is marked

1 State's Exhibit 105 there are four smaller
2 envelopes. First look at the large envelope,
3 State's 105, that has been marked just for
4 identification purposes. Do you recognize that
5 container?

6 A. Yes, I do.

7 Q. How is it that you are able to
8 recognize that container?

9 A. It has my laboratory number and my
10 initials on it.

11 Q. When material comes to your laboratory
12 for testing, do you assign your own laboratory
13 number?

14 A. Yes, I do.

15 Q. You are not satisfied with the other
16 laboratory's number, is that right, you want to
17 put your own on it?

18 A. We use our own tracking system.

19 Q. Okay. At the DNA lab, when you
20 receive evidence, you put on your lab number; is
21 that right?

22 A. Yes.

23 Q. What lab number did you assign?

24 A. I gave it the number F for forensic,
25 911108, which is the date the evidence was

1 initially received, and 035, which is the
2 special number, means it was thirty-fifth case
3 that we received that year.

4 Q. F91108035?

5 A. You missed it one. F911108035.

6 Q. Okay. You said the date you received
7 the evidence is reflected where?

8 A. F911108. Eleventh month, eighth day
9 of '91.

10 Q. So he received it on November eighth
11 of '91.

12 A. Yes, that is correct.

13 Q. Now, who did you receive evidence from
14 in this case?

15 A. We received the evidence from Kristy
16 Kim of the Houston Police Department crime
17 laboratory.

18 Q. Now, you had told us that you
19 recognize this envelope because of the lab
20 number. And are there initials on here to help
21 you recognize it?

22 A. Yes, I indicated that as well.

23 Q. These are your initials?

24 A. Yes, they are.

25 Q. Inside that envelope are four smaller

1 envelopes. In fact, did you see these as
2 recently as yesterday?

3 A. Yes.

4 Q. And when was it that you last saw
5 these four envelopes, State's Exhibits 101
6 through 104?

7 A. I turned them back over to Kristy Kim
8 of the Houston Police Department laboratory
9 yesterday afternoon.

10 Q. Were they in the same condition, other
11 than the fact that these exhibit stickers have
12 been added, do they appear to be in the same
13 sealed condition as when you gave them to her?

14 A. Yes.

15 Q. Are there any identifying marks on
16 each of those four packets 101 through 104 that
17 enable you to ascertain that they are the same,
18 that this is the evidence you received from
19 Kristy Kim and turned back over to her?

20 A. Yes, they have my laboratory number
21 and my initials on them.

22 Q. Are there any other identifying
23 numbers on there?

24 A. Lots.

25 Q. A lot?

1 A. Yes.

2 Q. Does it have the Houston Police
3 Department identifying laboratory number on the
4 container, the envelope as well as the vials
5 contained in those envelopes?

6 A. Yes, it does.

7 Q. What is that number?

8 A. L91-9937.

9 Q. So when you start the process, when
10 the evidence comes into your laboratory, was
11 there also a submission form? Other than the
12 actual physical evidence, did they give you some
13 paperwork for you to track your work?

14 A. We have a submission form for our
15 laboratory that we fill out with the evidence
16 that we receive from them. We receive from
17 them an evidence receipt. And it's the Houston
18 Police laboratory evidence receipt which
19 reflects when they turned it over to us as well.

20 Q. So, does your receipt also reflect the
21 Houston Police Department laboratory number that
22 this case was in connection with?

23 A. Yes, it does.

24 Q. That is what?

25 A. L91-9937.

1 Q. Now, did you bring with you today your
2 file in connection with this case?

3 A. Yes, I have.

4 Q. Let me show you what has been marked
5 for identification purposes as State's Exhibit
6 -- marked incorrectly. It has to be
7 re-marked. State's Exhibit 106. Let me ask you
8 whether you recognize that, is it a three or
9 four page document?

10 A. Four page document.

11 Q. Four page docket marked State's
12 Exhibit 106?

13 A. Yes. It's a copy of laboratory report
14 that I wrote on this case.

15 Q. Now, is this your original document
16 from your file?

17 A. No. It's a copy of the report that I
18 have in my file.

19 Q. Have you had a chance to look at
20 this? Is it an exact copy of your original
21 report?

22 A. Yes.

23 Q. And is this report a part of your
24 records that you keep in the regular course of
25 business there at your laboratory?

1 A. Yes, it is.

2 Q. Was it prepared by an employee who has
3 personal knowledge of the information that is
4 being put in this report?

5 A. Yes, it was.

6 Q. In fact, who prepared it?

7 A. I prepared the report.

8 Q. Is this report, State's Exhibit 106,
9 prepared at or near the time of the events that
10 are being recorded?

11 A. Yes.

12 MS. DAVIES: Your Honor, at this time
13 I tender to defense counsel for his inspection
14 State's Exhibit 106, and I will offer it into
15 evidence.

16 MR. STAFFORD: We have no objection.

17 THE COURT: State's 106 is admitted.

18 BY MS. DAVIES:

19 Q. Now, can you explain to us, when you
20 received these little vials in the envelopes 102
21 through 105 -- wait a minute -- 101 through 104,
22 how did you make use of those vials or the
23 contents of the vials?

24 A. The vials contained DNA that was
25 extracted from the evidence in the case at the

1 Houston Police Department crime laboratory.

2 Q. So, is that the first step in the
3 process of DNA comparison?

4 A. Yes, it is.

5 Q. I want you to help me. As a part of
6 your comparison, did you rely on the information
7 on those vials as to where the DNA extraction
8 had come from?

9 A. Yes, I did.

10 Q. All right. Would you look at each of
11 those little envelopes and tell me first --
12 which one do you have in your hand now, State's
13 Exhibit number?

14 A. 102.

15 Q. 102. That is DNA extraction from what
16 source?

17 A. DNA isolated as a known from Charles
18 Allen.

19 Q. What is the next envelope?

20 A. 103. This is DNA isolated as a known
21 from -- and it's labeled Robert Rhodes.

22 Q. Robert Rhodes. What laboratory number
23 is on there from the HPD lab?

24 A. L91-9937.

25 Q. Is that the same lab number that is on

1 all these samples?

2 A. Yes, it is.

3 Q. All right. And let's look at the next
4 sample, please.

5 A. State's Exhibit 104 is DNA isolated
6 from blood on the kitchen floor.

7 Q. Kitchen floor.

8 Do you have another small envelope
9 there?

10 A. It's State's Exhibit No. 101.

11 Q. 101. What is the source of the DNA
12 extraction?

13 A. DNA isolated from blood on the kitchen
14 drawer.

15 Q. Kitchen drawer?

16 A. Right.

17 Q. Once you received those DNA
18 extractions in your laboratory, what is the
19 first thing you do?

20 A. The first step of the process after
21 the DNA is extracted is to do what we call a
22 restriction digest.

23 Q. Do you have some visual aids to help
24 you in explaining this process?

25 A. Yes, I do.

1 Q. Let me call your attention to what I
2 have marked for identification purposes as
3 State's Exhibit 107. Does this poster reflect
4 some of the visual aids that you commonly use in
5 explaining your process?

6 A. Yes, it does.

7 MS. DAVIES: Your Honor, at this time
8 I am tendering State's Exhibit 107 to defense
9 counsel. I would like to offer this into
10 evidence with the court's permission to
11 substitute a photograph at the conclusion of
12 trial.

13 MR. STAFFORD: No objection.

14 THE COURT: State's 107 will be
15 admitted and a photograph will be allowed to be
16 substituted for the record.

17 BY MS. DAVIES:

18 Q. I am trying to position this where you
19 can see it so you can still use the
20 microphone. Can you see this well enough?

21 A. Yes, I can.

22 Q. I notice at the top it says Southern
23 Blotting. What does that term mean?

24 A. Southern Blotting is a phrase that is
25 commonly used in the laboratory to mean DNA

1 typing. Southern Blotting is actually only one
2 very small portion of the DNA typing, but it's
3 generally referred for the whole system.

4 Q. Is that because we do this testing in
5 the South?

6 A. No. Southern actually comes from the
7 person's name who originated the type of test,
8 name was Edward Southern.

9 Q. Thank you. To understand this, do we
10 start at the top left?

11 A. Yes.

12 Q. I notice it says bloodstain. Are we
13 starting before you actually begin in your lab
14 in this process?

15 A. Well, in this case that is where I
16 start in the lab. In lots of cases, we do get
17 in the actual evidentiary stain, whether they be
18 blood or some other stain, to do the DNA
19 extraction from.

20 Q. So, when it says bloodstain, what does
21 that indicate?

22 A. It just means that the evidentiary
23 sample, whether we had a bloodstain, a liquid
24 blood sample, the type of evidence that we might
25 get.

1 Q. Once you have a sample from a
2 bloodstain, the next step is what?

3 A. It's to extract the DNA from the
4 sample, either the blood or other tissue sample
5 in that stain.

6 Q. In this instance, that was done in the
7 HPD lab and sent over to you in the form of
8 these vials; is that correct?

9 A. Yes.

10 Q. Okay. In the four exhibits that you
11 have identified as 101 through 104; right?

12 A. Yes.

13 Q. All right. Now, once you receive
14 that, do you go to the next step?

15 A. Yes.

16 Q. That is what?

17 A. That is restricting the DNA.

18 Q. Now, please try to keep it in very
19 simple laymen's terms. Some of us don't
20 understand the laboratory like you do. Okay?

21 A. A restriction enzyme is an enzyme that
22 comes from various bacterial sources, and it is
23 also contained within the cells of humans. But
24 restriction enzymes have the capability of
25 cutting through long strands of DNA. One of

1 those recognized is a certain base pair sequence
2 in the numerous base pairs of the strands of
3 DNA. When it finds the sequence that it
4 recognizes, it cuts the DNA there. In any
5 particular person's DNA, a restriction enzyme, a
6 particular restriction enzyme same will always
7 cut that DNA in the same places. We use the
8 restriction enzyme Hae III, h-a-e, Roman numeral
9 three. It's just a designation of the enzyme
10 itself. And if we take my DNA and cut it with
11 that enzyme, it will cut it into a number of
12 fragments. If I cut it today, it will cut it
13 into those fragments. If I cut it tomorrow, it
14 will cut it always into the same fragments. And
15 that allows us to produce a pattern of DNA
16 fragments which can be compared from individual
17 to individual.

18 Q. In laymen's terms, if it cuts the same
19 place every time, constant, is that so that you
20 have got a constant standard to compare by?

21 A. Well, in any particular person, for
22 instance, your DNA, anytime I cut your DNA with
23 this same enzyme, it will give the same pattern
24 of smaller fragment sizes. That allows us to
25 take two samples that come from the same person,

1 cut them, and then compare them and see whether
2 we get the same pattern in our end result.

3 Q. When you say a fragment, you are
4 talking about a fragment or piece of this long
5 strand of DNA that is in every cell?

6 A. Yes.

7 Q. So, then you use this enzyme to cut a
8 strand of DNA into a smaller piece. What? Just
9 because that is more manageable in the
10 laboratory?

11 A. No, that allows us to make comparison
12 of the sizes that we get. Different people
13 will get a different pattern of the size
14 fragments.

15 Q. After you do that, then what do you do?

16 A. Then we just have these fragments now
17 in a tube. What we need to do is spread them
18 out so that we can look at them. So we do what
19 we call electrophoretic separation, which is the
20 next picture on the diagram.

21 Q. What happened to the transfer?

22 A. If you will follow the arrows, it goes
23 down to.

24 Q. See why I wanted you to keep it
25 simple?

1 A. What we do here is we put the
2 restricted or cut up DNA sample into a well of
3 an agarose gel. Agarose gel is simply a slab of
4 material that is a jello like material. This
5 acts as a molecular seal. We put an electrical
6 current through this gel, and the DNA moves
7 through the gel. Smaller fragments will move
8 more quickly and move down through the gel
9 quickly. And larger fragments will move slower
10 through the gel so that they will be -- they
11 won't move as far in the same length of time.
12 This allows us to run this for a set length of
13 time. We run our gels for eighteen hours. And
14 spread the fragments of DNA out across the gel.

15 Q. You spread them out so that you can
16 examine them at a later time?

17 A. Right. They are now sorted by size.
18 So the largest fragments or the longest
19 fragments with the larger number of the base
20 pairs are still near the top of the gel. And as
21 you go down toward the bottom of the gel the
22 fragments are smaller and smaller.

23 Q. In this case you had four different
24 samples of DNA, the kitchen drawer, the kitchen
25 floor, Charles Allen and R.R. From that other

1 vial. Do you spread all of those out on the
2 same gel, or do you do separate ones for each?

3 A. They are all on the same gel. Run in
4 different lanes of the gel along with some other
5 controlled samples. When the DNA moves through
6 the gel, it's loaded in a very particular area
7 of the gel. As it moves down through it, it
8 moves in a straight line right down the gel. So
9 if you could look at the DNA in the gel
10 afterwards you just see this long line of the
11 DNA down through the gel. That is the DNA
12 spread out from high molecular weight to low
13 molecular weight.

14 Q. So your samples stay distinct and
15 separate?

16 A. Yes, they do.

17 Q. Then what do you do next?

18 A. The agarose gel is like a slab of
19 jello, it will break. So we want to move the
20 DNA out of that gel onto something that will
21 hold it so that we can do other testing. We
22 use a piece of nylon paper, we call it a nylon
23 membrane. Sometimes called a filter. We do
24 that by capillary action. We put the filter on
25 top of the gel and allow the liquid to soak up

1 through the gel into the filter. When the
2 liquid passes through the DNA, it will carry the
3 DNA up out of the agarose where it's trapped by
4 the filter, and it will be then trapped on the
5 filter in the exact same pattern that it was in
6 the gel.

7 Q. So now you have got the same pattern
8 that was on this jelly substance, something that
9 is easier for you to handle?

10 A. That's right.

11 Q. Then what do you do?

12 A. The next step starts the actual
13 analysis, actual looking at a particular DNA
14 locus, that is, particular place on one of your
15 chromosomes or particular place in your DNA that
16 has differences between individuals. And we go
17 through that process. The first step in that is
18 called hybridization. For hybridization, we
19 take a short section of DNA that is known to
20 come from a specific place. We denature it,
21 that is, separate the two strands so it's now
22 single stranded. It's one-half of the DNA
23 ladder. That piece is then labeled with a
24 radioactive molecule. By chemical reaction, we
25 can just attach a radioactive molecule to that

1 single strand of DNA probe. We then put it in a
2 solution with this filter and let that solution
3 hybridize or just sit with the solution washing
4 over the filter. And we allow that to go
5 overnight. What this allows us to do is to
6 have that single strand of DNA come in contact
7 with the DNA that is on the filter. In the
8 process of the transfer of the DNA to the
9 filter, we also separated the two strands of DNA
10 on the filter. So now this radioactive probe
11 can come along and find its exact match and
12 re-allele, as we talked before, that is, find
13 its match and attach back together with the DNA
14 at the particular place in all of your DNA that
15 it belongs. And it marks that spot on the DNA
16 that is spread out across the filter. Then
17 from there we go on, wash off any excess of this
18 radioactive probe, that is, wash off any probe
19 that hasn't bound to its exact match in the
20 sample, and then take the filter and put it
21 against x-ray film because this probe has a
22 radioactive molecule attached to it. Anywhere
23 that it has attached to the DNA in the sample it
24 will make a black mark on the x-ray film. And
25 we then get a pattern which, or we develop the

1 film, we get what we call an autorad which shows.
2 a pattern which is depicted on the diagram that
3 could be different between different samples on
4 the gel and then will reflect the size of the
5 DNA fragments that contain the specific DNA
6 probe.

7 Q. Now, did you go through that entire
8 process with the samples that were given to you
9 in this case?

10 A. Yes, we did.

11 Q. Do you end up with something similar
12 or like an x-ray film?

13 A. Yes, we do. We end up with several of
14 them.

15 Q. Now, you used the term -- you talked
16 about doing a probe. Can you, in laymen's
17 terms, tell us what a probe is?

18 A. The probe is a short piece of DNA that
19 we can then mark with a radioactive molecule
20 that is specific for a particular place in your
21 DNA. And those probes have names or locations
22 on the chromosomes.

23 Q. This is what assists you in making an
24 identification?

25 A. Right. These are what we make the

1 identification with by examining these
2 particular probes and areas on the DNA, and
3 these areas are genetic markers like A-B-O
4 typing would be.

5 Q. Is it more exact? When you say A-B-O
6 typing, are you talking about blood typing?

7 A. Yes.

8 Q. Do y'all have type A, type B, type O?

9 A. Type A, B and type O, yes.

10 Q. If I am understanding you correctly,
11 it could be much more precise in identifying
12 somebody by DNA than by A-B-O typing?

13 A. The genetic markers that we look at,
14 the particular places on the chromosomes we look
15 at are more polymorphic than A-B-O type, that
16 is, A-B-O can have three possible alleles, A, B
17 and O, and they can be combined to give you
18 blood types of A-B, A-B and O. The number of
19 alleles that any particular--.

20 Q. You just used a word that I am not
21 familiar with, allele?

22 A. Allele is the genetic variance.
23 A, B and O are the alleles in the A, B, O blood
24 typing system. Any particular allele or
25 genetic variance in the DNA typing, there is

1 just more of them. Instead of it just being
2 three alleles and four possible types, there is
3 really an unknown number of alleles but greater
4 than twenty, and these can be combined in
5 combinations of two to provide almost an
6 infinite number of types in any one genetic
7 locus.

8 Q. Is it combination, then, that makes
9 each individual DNA distinctive?

10 A. Yes. When we look at several genetic
11 markers by DNA typing, then the probability that
12 one person will have the same type at several
13 different loci becomes quite small.

14 Q. Now, when you say you do a probe, do
15 you just do one probe, one test for comparison
16 in order to reach your conclusion?

17 A. No. We have five different genetic
18 loci that we look at using DNA probes.

19 Q. So, when you use five different
20 probes, does that mean that you go through this
21 process you have described five times?

22 A. We go through the process from the
23 hybridization on, incubating it with the probe,
24 washing it and putting it in the x-ray film five
25 times.

1 Q. I am interested in knowing the process
2 of whether you exclude someone, in other words,
3 can you look at -- do you have to go through
4 that process five times to determine that, well,
5 this just can't be the same person exclusively?

6 A. No. If you have excluded someone,
7 you would probably exclude them with just one
8 probe. You would be able to see that the two
9 samples did not match, and you could stop
10 there. We generally continue through and do all
11 of our probes on a particular case just for
12 completeness. But even after one probe, if the
13 two samples don't match, then you have excluded
14 those samples as having come from the same source.

15 Q. If you do your first probe and
16 comparison and the person is not excluded, in
17 other words, they are included, some portion of
18 the DNA matches up, why is it you go on and do
19 additional probes?

20 A. If it does match?

21 Q. You have a match on probe one, why
22 don't you stop there?

23 A. Well, those alleles or the bands of
24 pattern we see occurs in a certain percent of
25 the population. We could stop and say: Okay,

1 well, this matches and this pattern occurs in
2 this whatever percentage of the population.
3 That is what you do with A, B, O typing, if you
4 match A, B, O types, you say okay, you know, we
5 get type A, this sample could have come from
6 this person because this person also has type A
7 and that occurs in forty percent of the
8 population. With one DNA probe, that percentage
9 is going to be much smaller but it still might
10 be even as much as two or three percent of the
11 population, depending on exactly what type the
12 person has. If we go on and do two, three,
13 four, five probes, all those percentages can
14 then be combined together. These probes all
15 lie on different chromosomes. They are
16 unrelated. So you can say that you can then
17 essentially multiple the numbers together and
18 you get a frequency in which the combined
19 pattern could occur in the population. And
20 that can become very, very small.

21 Q. So, is your combination, your pattern
22 -- as you get more information about your
23 pattern, you can be more precise in calculating
24 how often that would occur?

25 A. Well, the percent of people that that

1 combined pattern could occur in will get smaller.

2 Q. Now, you brought your report with you
3 today and we have got it in evidence as State's
4 Exhibit 106. In doing your probes and in doing
5 your comparisons, did you use some numbers in
6 identifying what you were -- as you lined up
7 your samples for comparison?

8 A. I am not sure what you are asking.

9 Q. Let me call your attention to the
10 first page of State's Exhibit 106.

11 A. Yes.

12 Q. I notice you have got some numbers 101
13 through 104.

14 A. Yes.

15 Q. Okay. Now, those are not my exhibit
16 numbers; are they?

17 A. No, they are not.

18 Q. Strikingly familiar, unfortunate
19 coincidence, but I need to know what you use --
20 instead of talking about the numbers, let's do
21 it this way. Did you keep track of your samples
22 so that you could know what you were matching up
23 by a numbering system?

24 A. Yes, I did.

25 Q. May I see the x-rays, the prints which

1 you ended up with? Is there one for each of the
2 five probes?

3 A. Yes, there is.

4 Q. Are those a part of your records also?

5 A. Yes, they are.

6 Q. Can you describe for the jury -- did
7 you identify for your purposes as you were
8 laying out these samples which sample you were
9 comparing, whether it was the sample from
10 Charles Allen or the drawer or the floor, and do
11 that consistently in each of your probes?

12 A. Yes.

13 Q. Now, when you did the first probe, can
14 you tell us what results, what you learned in
15 terms of whether or not any of these matched up?

16 A. Okay. For all of the probes that we
17 ran, we found that the pattern that was
18 developed for the DNA from the known blood of
19 Robert Rhodes or Robert Rhodea gave the same
20 pattern as the DNA from the blood found on the
21 kitchen floor and gave the same pattern as the
22 blood that was on the kitchen drawer.

23 Q. All right, let me be sure I
24 understand. You are saying that the sample
25 that was brought to you that was the DNA

1 extraction that was labeled Robert Rhoades or
2 Rhodea with the HPD lab number did match, line
3 up with what sample?

4 A. The samples from the kitchen floor and
5 the kitchen drawer.

6 Q. Now, that was true on each of the five
7 probes?

8 A. Yes, it was.

9 Q. Is that something that you can see
10 visually when you are doing your comparisons?

11 A. Yes, it is.

12 Q. As you ran, as you compared the DNA
13 sample from Charles Allen, did it match up on
14 any of the probes with any of the other samples
15 that you had?

16 A. The DNA sample that we received from
17 Charles Allen was what we call partially
18 degraded, that is, the DNA wasn't all high
19 molecular weight. It was already broken up
20 into some pieces. In a sample like that,
21 sometimes it will not give results at all. In
22 this case, we got no pattern for any of the
23 probes for Charles Allen due to this degradation
24 of the sample of the DNA.

25 Q. Is that to say that you were not able

1 to, I mean, you just wouldn't be able to reach
2 any conclusion at all as to Charles Allen?

3 A. That is correct.

4 Q. Presence or lack. Okay.

5 Now, when you talk about the bands of
6 DNA--.

7 Your Honor, may I ask for some
8 assistance? I would like to set up the light
9 box.

10 If you would, would you walk around
11 here. It's a challenge in this courtroom to
12 situate things where everybody can see. Can
13 you display for us the film that you have from
14 your first probe? Let's try to show the jury
15 what it is.

16 A. I will simply do these in the order of
17 the probe zones.

18 Q. In the order of the probe zones?

19 Let me give you a pointer. Maybe that
20 will help you.

21 A. This is the autorad that we developed
22 for the probe called MS1 or D1S7. Meaning it's
23 on chromosome 1. It's the location that was
24 assigned on the chromosome.

25 Q. You need to keep your voice up.

1 A. Across the autorad we see that there
2 are several lanes with different numbers of
3 bands, dark lanes on the autorad. The lanes
4 that have a large number of bands are our
5 controls, and these are molecular weight
6 markers. Each of these bands corresponds to a
7 particular size fragment of DNA that is known.
8 We just know what sizes those are. Those
9 control to allow us to assign a size to any
10 other band that appears on the autorad.

11 The next lane here has two bands, is
12 our control that we call what we call human
13 standard or sizing control. And this is the
14 DNA sample that we run on every gel, and after
15 we get the pattern on every autorad, and it
16 allows us to make sure that the gel ran
17 correctly and we are getting the correct sizing,
18 correct pattern with any particular probe.
19 This DNA is actually my DNA, and we use it as a
20 control throughout the process. In cases where
21 we actually do the extraction, we start with a
22 blood sample and take that sample through the
23 entire process as a control for the whole
24 procedure.

25 The next lane is labeled 101. That

1 is our sample number that was assigned to the
2 sample from Charles Allen.

3 Q. Not the exhibit number?

4 A. Not the exhibit number.

5 Q. That is Charles Allen?

6 A. Yes.

7 Q. All right.

8 A. As we look down that lane we see that
9 it's blank, there are no bands in that lane.
10 That is the sample that was degraded, and we
11 didn't get a pattern for any of the probes in
12 that sample.

13 The next lane is sample 102. And we
14 see two.

15 Q. Instead of a number, tell us where
16 that sample is from.

17 A. That sample.

18 Q. Because that's your designation?

19 A. That is the DNA from the known blood
20 of Robert Rhoades. And it contains two bands,
21 two marks on the autorad in a particular
22 location as compared to the molecular weight
23 marker. We then have another molecular weight
24 marker. And then we have sample of DNA that
25 was from the blood from the kitchen floor. And

1 that sample still has particular patterns that
2 is developed in this probe.

3 The next pattern, the next sample is
4 the DNA from the blood from the kitchen drawer.
5 And that also has a particular pattern that is
6 developed in this probe.

7 The next lane what we call the
8 sensitivity standard. It's the same human
9 standard run at a very low level. And that
10 gives us like a cut off point in terms of how
11 much DNA we have. In this case, we don't see
12 any pattern from that. We found that throughout
13 all the probes. So we know that we are not
14 testing an amount of DNA actually down to that
15 level in a particular case. If we had an, for
16 instance, a sample from Charles Allen, if that
17 was the sample that we knew had not been
18 degraded, it would indicate that maybe we didn't
19 get a pattern simply because there wasn't enough
20 DNA present. That can be a problem on an
21 unknown sample, that is, a sample from an
22 evidentiary source as opposed to a known
23 sample. For this sample, we know that that was
24 extracted from a known blood sample. We know
25 that we had enough DNA but it was degraded.

1 If we look at the pattern and compare
2 the pattern from the two unknown samples as the
3 DNA from the blood on the floor and the drawer,
4 we see that the bands in those patterns follow
5 in the relative position as the bands in the
6 known sample from Robert Rhoades; therefore, we
7 declare this to be a match. We do this
8 visually to begin with -- do the bands fall in
9 the same general position. If they do, then
10 the samples match and they could have come from
11 the same source.

12 Q. Now, I think for most of us we expect
13 it to look far more intricate than that series
14 of dots that we are seeing. If I am
15 understanding you -- correct me if I am wrong --
16 these vertical rows are pictures, if you will,
17 of just that DNA strand that you process?

18 A. Portions of the DNA that are
19 identified by this particular.

20 Q. That is each lane, the vertical series
21 of dots. It's when we have this horizontal
22 match or lineup is where the radioactive one has
23 matched, has found a mate, so to speak?

24 A. The two samples have patterns that are
25 in the same relative position. It can't be

1 excluded from coming from the same source.

2 Q. You're looking for the lineup, anytime
3 you have got a horizontal alignment or match; is
4 that right?

5 A. Yes.

6 Q. Too simple I know, but. If you
7 would, just put up -- did you get a match with
8 your known sample from Rhoades on each of your
9 probes?

10 A. Yes.

11 Q. Can you just show us where the match
12 is in each instance?

13 A. This is probe that is for DNA locus
14 chromosome two. Again, see the known sample.
15 The standard sample gave the expected pattern.
16 The known sample and the two unknown samples all
17 have bands at the same relative position;
18 therefore, match the known sample.

19 Q. Were those matches -- the match comes
20 with Rhoades' sample matching up to the sample
21 both from the drawer and the floor in the
22 kitchen; is that correct?

23 A. Yes, that is correct.

24 This is the pattern obtained from
25 probe that is on chromosome four. Again, our

1 human standard came up and gave us a pattern
2 that, the expected pattern. The known sample
3 from Rhoades and our two unknown samples again
4 gave the same pattern, have bands in the same
5 relative position and, therefore, a match for
6 this probe.

7 Q. A match between Rhoades?

8 A. And both unknown samples.

9 Q. Being what?

10 A. DNA from the blood on the kitchen
11 floor and the DNA from the blood on the kitchen
12 drawer.

13 This is the autorad of the probe
14 location on chromosome 14. Again we get a
15 pattern with the human standard. Gives
16 expected band size. And we see a pattern for
17 Rhoades and for the unknown sample from the
18 floor and the kitchen drawer that have bands in
19 the same relative position and are a match to
20 Robert Rhodes.

21 Q. Did you get yet another match?

22 A. This probe is from a location on
23 chromosome fifteen. Again, with doing standard
24 control, we got our expected size pattern, and
25 with the DNA from Rhoades we got a pattern that

1 has bands in the same relative position and,
2 therefore, matches to the pattern that was
3 obtained from the DNA from the kitchen floor and
4 the DNA from the blood from the kitchen floor.

5 Q. You used that known, that control each
6 time just to check your test to make sure it's
7 working properly?

8 A. Right. And it lets us know that the
9 probe we used was the correct one and is giving
10 us the correct pattern and lets us know that the
11 gel ran correctly, that is, the DNA spread out
12 correctly so it's giving us correct size and
13 pattern.

14 Q. Thank you. Now, after you examined
15 your results visually, then what did you do?

16 A. If we do a visual examination and we
17 exclude, that is, the patterns aren't the same,
18 then we are essentially finished and we can
19 write a report and say that the samples have not
20 come from the same source. In a case like this,
21 where we have found the same pattern in the
22 unknown samples and the known sample, we then go
23 to computer and do a computer imaging of the
24 autorad, and using the molecular weight markers
25 now assign a number that is a size, a length of

1 the DNA to each of the bands that we see. This
2 allows us another matching source. If the
3 numbers that are generated by the computer for
4 each of the bands that visually match have to
5 fall within a certain percentage of each other
6 that takes into account the differences in how
7 the gel runs from low molecular weight to high
8 molecular weight, the problems in the imaging as
9 far as, you know, not placing things in the same
10 place. But if they fall within a certain
11 tolerance which is essentially our error rate
12 for the measurement, then it's declared to be a
13 computer match or the match is confirmed by the
14 computer, and then we can go to our database and
15 generate statistics as to how often that pattern
16 occurs in the population.

17 Q. Now, did you go to that final stage of
18 calculation based on the database that your
19 laboratory has to calculate frequency of the
20 existence of the pattern that you saw in this
21 case?

22 A. Yes, I did.

23 Q. Did you form an opinion, Ms. Hammond,
24 as to the frequency with which the DNA pattern
25 that you saw matching, in other words, Rhoades'

1 pattern as it matched with the sample on the
2 kitchen floor and drawer, how frequently would
3 that occur in the population?

4 A. The pattern that we found for Rhoades'
5 over all five probes occurs in approximately
6 seven ten-millionths of one percent of the
7 Caucasian population. That is a frequency of
8 approximately one in 135 billion people.

9 Q. One in 135 billion people?

10 A. Yes.

11 Q. Let me be sure I understand that. Did
12 you expect to have to take blood samples from
13 135 billion people before you would ever come
14 across this same pattern again?

15 A. Yes.

16 Q. Now, is there an even more
17 conservative way to calculate this? Was that
18 your conclusion based on your work in your
19 laboratory and the database available?

20 A. Yes.

21 Q. Is that the opinion that is reflected
22 in your report that is in evidence as State's
23 Exhibit 106?

24 A. Yes, it is.

25 Q. Would some experts calculate it

1 differently?

2 A. Yes.

3 Q. How would they calculate it and why?

4 A. Well, there has been some disagreement
5 among the experts that have been sort of
6 fighting in DNA typing over how these
7 calculations have been made. Another way to do
8 the calculations, this year, it was in April,
9 sometime after this report was written, this
10 year, the National Academy of Science put out a
11 document that reflected their research into DNA
12 typing and also into the methods of calculations
13 of the statistics. And what they advocated,
14 which it doesn't make it law or anything but
15 it's just what they suggested as perhaps would
16 be a more conservative way to do the
17 calculations, is what they call a ceiling
18 principal. And what that does is you go
19 through your database and you look at not just
20 the ethnic group or racial group that you
21 assigned or the suspect, your known sample has
22 been assigned to in this case just by visual
23 identification but look at all your ethnic
24 groups and look at how often each particular
25 allele occurs across those groups and take that

1 highest number. Then go even further and say
2 that if that highest frequency for a particular
3 allele is not more than ten percent, to use ten
4 percent as the frequency of that allele. And
5 that fairly well assures that your estimate of
6 how often a particular pattern will occur in a
7 population will be including a much larger -- or
8 rather, or make it a much smaller population
9 that that sample has to have come from. So if
10 we go back and go through our database and do
11 this ceiling principle calculation using ten
12 percent with the numbers or less than that, we
13 come up with a different calculation.

14 Q. What is that?

15 A. It comes down to a frequency of
16 approximately one in 66 million people. One in
17 66 million people.

18 Q. So, if I am understanding you -- I
19 probably erroneously used the word people in
20 your first estimate. The way you calculated it
21 in what your actual data available in your lab,
22 it would be one in 135 billion Caucasians?

23 A. Yes.

24 Q. If you recalculate in terms of more
25 conservative ceiling principle that includes all

1 races, it would be one in 66 million people; is
2 that correct?

3 A. That's correct, yes.

4 Q. So even under the more conservative
5 method you would expect to have to test and
6 compare 66 million people before you would have
7 that same pattern show up again; is that correct?

8 A. Yes.

9 MS. DAVIES: Pass the witness.

10 CROSS EXAMINATION

11 BY MR. STAFFORD:

12 Q. Very briefly, ma'am. I am gathering
13 what you are telling our jury is that you can
14 take known blood sources from unknown blood
15 sources and pretty well -- this is basically
16 like fingerprinting in a way except it's a
17 little more scientific and a little bit more
18 complex, but it pretty well accurately tells you
19 or matches up whether or not a person was there
20 or was not there?

21 A. Well, it gives us a certain pattern
22 that we can say excludes or includes and then we
23 can put a probability on that.

24 Q. You have already pretty well told the
25 jury that there are some disagreements among the

1 scientific community as to DNA, especially from
2 the defense side?

3 A. Actually the disagreement among the
4 scientific community is only in how the numbers
5 should be calculated.

6 Q. That is basically what it is. For
7 example -- this has been previously introduced
8 into evidence -- for example, if the State had
9 brought you known blood samples of sufficient
10 amount say from this wall in this bedroom and
11 presented it to you, that would have been an
12 unknown source; right?

13 A. Yes.

14 Q. Other than it came from a wall?

15 A. Yes, sir.

16 Q. And presented a known source to you,
17 you could have done a comparison and maybe
18 determined whose blood that was on that wall;
19 could you not?

20 A. I could have determined whether it
21 could have come from that known sample or
22 whether it did not come from that known sample.

23 Q. And evidently you could come up with
24 basically a percentage one way or the other,
25 depending on what kind of data you get, and make

1 a projection; could you not?

2 A. If we match to a known sample, then we
3 could give a statistical number.

4 Q. And that would be true from any source
5 at the crime scene. They could have submitted
6 various, as they did, in the kitchen?

7 A. Yes.

8 Q. They could have gone to the bedrooms
9 or bathrooms and presented it to you as well?

10 A. Certainly.

11 Q. You could have made a determination.

12 So, in essence, what you are telling
13 this jury is that if Mr. Rhoades has admitted
14 being in the kitchen and leaving those drops,
15 basically what you are telling the jury he told
16 you the truth, he admitted being there.

17 MS. DAVIES: I object to speculation
18 as to whether this defendant told the truth.

19 THE COURT: Sustained.

20 BY MR. STAFFORD:

21 Q. If he stated that he was in the
22 kitchen where these known blood sources came
23 from, there is no way -- your evidence doesn't
24 disprove that he wasn't there; does it?

25 A. No, it doesn't.

1 MR. STAFFORD: Pass the witness.

2 REDIRECT EXAMINATION

3 BY MS. DAVIES:

4 Q. As to locations of Charles Allen's
5 blood, you had a sample there from Charles
6 Allen. I believe that is the one that you said
7 was degraded and you did not get any results?

8 A. Yes, that was a known sample, yes.

9 Q. So if we had brought you samples from
10 the house from other locations where Charles
11 Allen's blood happened to be, would you ever be
12 able to establish that for us by DNA testing?

13 A. With this particular known sample, we
14 would not have known whether it came from
15 Charles Allen or not.

16 Q. You say it was degraded. When
17 someone dies, does the quality of the blood
18 deteriorate?

19 A. The DNA in the blood or in any sample
20 begins to deteriorate with time. But it's also
21 affected by the condition of the sample. So if
22 it's wet blood it will degrade more quickly.
23 There is bacteria and things that can go in and
24 work on the cells and the DNA, break it down.
25 And a dry sample, it becomes more preserved.

1 The bacteria, mold and things won't grow as well
2 in a dry sample as they might in the wet. It's
3 not uncommon for us to find degraded DNA from
4 the sample from a deceased individual.

5 Q. The ideal situation is when you have a
6 live human being who under laboratory conditions
7 gives you a clean blood sample to test?

8 A. That is always nice.

9 MS. DAVIES: Pass the witness.

10 MR. STAFFORD: No other questions.

11 THE COURT: You may stand down.

12 Any objection to this witness being
13 excused?

14 MS. DAVIES: No objection.

15 THE COURT: Ladies and gentlemen, take
16 a short break. If you would, go back to the
17 jury room.

18 (Recess; after which, the following
19 proceedings were had:)

20 THE COURT: Ms. Davies, call your next
21 witness.

22 MS. DAVIES: The State calls Don
23 Allen.
24
25

1 DON ALLEN

2 was called as a witness by the State and, having
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. DAVIES:

6 Q. Would you, please, tell us your name?

7 A. Don J. Allen.

8 Q. Mr. Allen, how are you related to
9 Charles and Brad Allen?

10 A. I am their father.

11 Q. Is your wife here in the courtroom?

12 A. Yes, she is.

13 Q. What is her name?

14 A. Emma Allen.

15 Q. And what about, do you have other
16 children?

17 A. Yes, four other children that are here
18 today.

19 Q. What are their names?

20 A. James, Janis, Kevin and Donny.

21 Q. Are they all sitting here in the
22 courtroom?

23 A. Yes.

24 Q. Are there other family members with
25 them?

1 A. Yes.

2 Q. Are your other sons, your surviving
3 sons, are they married?

4 A. Yes.

5 Q. Mr. Allen, I want to ask you several
6 questions about your sons and the events leading
7 up to September 13 of 1991. How long had you
8 and your family lived on Keith Street?

9 A. A little over thirty years.

10 Q. With the family, the wife and sons and
11 daughter that you have just described?

12 A. Yes, the whole family.

13 Q. I take it that you are certainly
14 familiar with the area around Keith Street?

15 A. Oh, yeah.

16 Q. Having lived there that long. I would
17 like for you to clarify a couple of things for
18 us. I am showing you a diagram that we have
19 marked State's Exhibit 12. I will put it up
20 here where you can see it. Is there a trailer
21 park near Keith Street, near 624 Keith Street
22 where your sons lived?

23 A. Yeah, one right directly across the
24 street. A driveway.

25 Q. Right directly across the street?

1 A. Yes.

2 Q. Let me take my pen, if you would, and
3 just put a big T. If this dot is where your
4 sons lived and 609 is your house, can you just
5 put a T approximately where that trailer park
6 is?

7 A. (Complies).

8 Q. Now, in back of the trailer park, is
9 there an open field area?

10 A. Yes, there was about two acres of an
11 old trailer place abandoned, and they had all
12 these trailer houses, and weeds had grown up.
13 About two or three acres.

14 Q. Of just open field back in here?

15 A. Backing up to the next street, Smith
16 Street.

17 Q. There on Smith Street, is there
18 another trailer park?

19 A. Yes. If you go all the way to the
20 left and go all the way down to the end of the
21 street, there is a trailer place on the right.

22 Q. You say the end of Smith Street?

23 A. That is correct.

24 Q. Where would the trailer park be, about
25 in here?

1 A. Yes.

2 Q. Put another T.

3 And what about the area around that
4 trailer park, is there any open field area
5 there?

6 A. Yeah, there is two or three vacant
7 acres in between the houses down to Smith.

8 Q. Thank you. Now, your sons, Charles
9 and Bradley, about how long had they been living
10 in the house at 624 Keith Street?

11 A. Oh, I would say -- they hadn't closed
12 on that house yet, and I would say a couple of
13 weeks, maybe longer, maybe a little shorter.

14 Q. As an adult, had your son Charles, had
15 he ever lived in the house with you during his
16 adult years?

17 A. Oh, yes.

18 Q. Were you in and out of his home there
19 at 624 Keith on many occasions?

20 A. Yes. Me and my wife, the day it
21 started, we was there every day.

22 Q. When you say the day it started?

23 A. The day they started building the
24 home.

25 Q. Throughout construction?

1 A. Yes, through the construction. And at
2 the time he moved in.

3 Q. And after they moved in, would you and
4 your wife go over there very often?

5 A. Oh, yes, every day.

6 Q. Coming and going from Charles and
7 Brad's house there, did you have occasion to
8 notice whether they had gotten in the habit of
9 being real careful of locking the doors?

10 A. Bradley Dean would. He was very
11 careful. But I went over one day with my
12 sister-in-law, and the house was locked in the
13 middle of the day, but they had left a door open
14 around the back.

15 Q. So one door?

16 A. One door might be open, yes.

17 Q. You made a point of saying Bradley
18 Dean is careful?

19 A. Yes. More so than Charles.

20 Q. Would it be unusual for you to go over
21 to their house and for the door to be unlocked,
22 one of the exterior doors would be unlocked?
23 Would that be unusual or common?

24 A. That would be common for it to be
25 unlocked. At night, of course, I didn't go

1 over there at night. During the day, most of
2 the time, it was open.

3 Q. About how far was it from your house
4 to theirs?

5 A. Half a block. Maybe not that far.
6 Half a football field.

7 Q. Had you noticed, through the years,
8 both when they lived with you and then, I guess,
9 more importantly, when they were living down the
10 street at 624 Keith, had you noticed what your
11 sons' habits were in connection with leaving
12 lights on around the house?

13 A. They would leave the outside lights on
14 and sometimes the lights in the house.

15 Q. Even at night?

16 A. Even at night sometime.

17 Q. Certainly I am not asking you whether
18 -- I assume that you do not know what lights
19 were on inside the house after you left?

20 A. No, I don't have any idea.

21 Q. But as a general thing, I mean, had
22 you had occasion to go over there -- let me ask
23 it this way. Would you frequently go over in
24 the morning?

25 A. Oh, yes.

1 Q. Why was that?

2 A. To watch the construction and
3 overseeing the builder and things I wanted
4 done. I had built a couple of houses.

5 Q. What about after the boys moved in?

6 A. Oh, yes, I was over there at least
7 once a day.

8 Q. And were there times that like would
9 you, say, just let yourself in, or how would you
10 get into the house?

11 A. Up to the time he installed an alarm
12 system, and he gave me the code, but he left it
13 off most of the time, anyway, because David, his
14 friend David was coming and going, and his
15 brother was coming and going, and me and my wife
16 would come and go. So, I can never remember
17 that alarm going off at any time.

18 Q. Do you ever remember seeing it
19 actually in use?

20 A. One day they was playing with it and
21 showing each other, and I didn't pay too much
22 attention to it.

23 Q. As you would come and go from the
24 house after they were living there, did your see
25 it actually in use?

1 A. No.

2 Q. Let's go back, talking about the
3 lights. Would you ever go over in the morning
4 to drink coffee with your sons?

5 A. Oh, yes.

6 Q. Now, if you would go over in the
7 morning, in fact, I didn't ask you do you work
8 during the day?

9 A. No. I am retired.

10 Q. You are retired from what job?

11 A. Anheuser Busch.

12 Q. How long did you work there?

13 A. Twenty-five years.

14 Q. Are you enjoying your retirement?

15 A. Oh, yes.

16 Q. That allows you to go drink coffee?

17 A. That was my major project every day.

18 Q. So you would go over there in the
19 morning. Would you just go right on in the
20 house, or how, would you knock first, what?

21 A. Well, I usually knew if Charles was
22 working on not. If he was home, sometimes if
23 he worked midnights he would come by our house,
24 but I knew he would go home and go to sleep. I
25 wouldn't go over until that afternoon about four

1 o'clock.

2 Q. On occasion, if he was home and you
3 would go in the morning, would you have an
4 opportunity to see whether the lights were left
5 on?

6 A. Oh, yes. I got on him a couple of
7 times about leaving the lights on.

8 Q. Why was that?

9 A. The electric bill.

10 Q. Was that exterior lights?

11 A. Yes. He had a couple of lights
12 outside, exterior lights.

13 Q. Would that be in the back of the house
14 as well as the front?

15 A. He had some lights in the back of the
16 house, and they was left on sometime.

17 Q. Did your sons have a dog or cat?

18 A. No.

19 Q. Tell me a little bit, if you know,
20 about Brad's eyesight. Did Brad wear glasses?

21 A. Yes. He was nearsighted.

22 Q. Did he wear contact lenses or
23 prescription glasses or both?

24 A. He wore both.

25 Q. Is that something that he did, always

1 when he was up and about?

2 A. Yes, he had to have his glasses. At
3 this particular time, I think he had skinned one
4 of his contacts, and he was wearing glasses.

5 Q. So when he would get up in the morning
6 -- you did your hand up -- first thing, put on
7 the glasses?

8 A. Yes.

9 Q. What about Charles?

10 A. No, Charles didn't wear no glasses.

11 Q. Was Charles in the habit of, if you
12 know, when he was at home and comfortable,
13 walking around the house in his underwear?

14 A. No, never.

15 Q. Probably wouldn't be unusual for a
16 young man to do that?

17 A. Not Charles.

18 Q. How is it that you know that? You
19 seem to be speaking pretty firmly there, Mr. Allen.

20 A. He had an old robe that he wore. You
21 have to understand. He worked twelve hour
22 shifts, and that required him to shower after
23 work and shower before work. So he would come
24 home, sleep, get up and put the robe on. He
25 wouldn't change to his work clothes until it was

1 time to go to work, no matter what, who was
2 there or whatever. He always wore that old
3 robe. I threatened to burn it one time.

4 Q. And now, to your knowledge, as his
5 father, he might sleep in his underwear; is that
6 right?

7 A. Oh, yeah.

8 Q. But if he is up around the house,
9 would you expect him to be going into the
10 kitchen or doing anything around the house?

11 A. Not without that robe on.

12 Q. Have you known your son Charles to
13 step outside the house say to get the newspaper
14 in the mornings or anything like that in his
15 underwear?

16 A. Well, he wasn't taking a paper. He
17 wasn't taking a paper, but he wouldn't step out
18 of the house without that robe on or clothes on.

19 Q. Not even for an instant?

20 A. No reason.

21 Q. Let me call your attention to State's
22 Exhibit 68. That robe that Charles always wore,
23 do you see it in State's Exhibit 68?

24 A. Yes, it's hanging right there by the
25 door.

1 Q. Is this the plaid robe right there?

2 A. Yes.

3 Q. Shown reflected in the mirror.

4 Do you know what schedule Charles
5 worked at his job with Lubrizol?

6 A. They call it the schedule A and B. At
7 this particular time, he was on the midnight
8 shift. That is six o'clock in the evening to
9 six o'clock in the morning.

10 Q. Would his shift vary from time to
11 time?

12 A. Well, it would be like twelve hour
13 shifts. He would work like three midnights, be
14 off two days and work two or three days six to
15 six again. Then he would be off two days or
16 one day.

17 Q. You said he was working from six p.m.
18 to six a.m.?

19 A. At this time.

20 Q. The week before his death; is that
21 right?

22 A. No, he was working midnights. He was
23 suppose to go to work that night from six to
24 six. Midnights. And he took off that night.

25 Q. On Friday, the twelfth?

1 A. On Friday, the thirteenth.

2 Q. I am saying. Okay. I'm getting the
3 dates mixed up.

4 A. He worked the twelfth.

5 Q. He worked on the twelfth.

6 A. Got off work at six o'clock that
7 morning.

8 Q. So he had done a twelve hour shift?

9 A. Yes.

10 Q. From six p.m. on Wednesday, ending at
11 six a.m. on Thursday, the twelfth?

12 A. That is correct.

13 Q. And then did you see your son, did you
14 see Brad during the day on Thursday, the twelfth?

15 A. Brad went to work that day. And then
16 I seen him later on that night.

17 Q. During the day on Thursday, the
18 twelfth, after Charles got off work at six a.m.,
19 did you see him during the day?

20 A. Yes.

21 Q. Do you recall what time of day that
22 was?

23 A. It was around noonish, twelve, 1:00.

24 Q. How was it that you happened to see
25 Charles?

1 A. My sister-in-law and her daughter came
2 over and they wanted to see the house. And I
3 said, "Well, he is probably up." And, so, we
4 walked over, and he was there in his robe, and
5 we went in. We wanted him to play the piano and
6 show the house.

7 Q. Who was with you on that visit?

8 A. My wife and sister-in-law and her
9 daughter.

10 Q. Did Charles play the piano?

11 A. Yes, he did.

12 Q. What was the name of the CD that
13 Charles made?

14 A. A Brand New Day.

15 MR. STAFFORD: I object to the
16 relevancy.

17 THE COURT: Sustained.

18 BY MS. DAVIES:

19 Q. Is that what he played for you on the
20 twelfth?

21 MR. STAFFORD: Again I object to the
22 relevancy of this matter.

23 THE COURT: Sustained.

24 BY MS. DAVIES:

25 Q. How long was your visit with your son

1 Charles at that time?

2 A. I would say thirty to forty-five
3 minutes.

4 Q. Did you leave or did he?

5 A. No, we left. We went back. My
6 sister-in-law had to be home by 3:00, I believe
7 it was.

8 Q. So, do you know whether Charles slept
9 during that day, since he had worked all night?

10 A. No. I asked him about that. Because
11 I said, "Don't you have to go to work tonight?"
12 He said, "No, I am taking off."

13 Q. Why was that?

14 A. He was going to work on his studio
15 that night.

16 Q. In fact, did you have any conversation
17 with your son about that, whether he was going
18 to work on the studio?

19 A. He was going to work on the studio
20 that night, but he stayed up all that day.

21 MR. STAFFORD: This would be all
22 hearsay, not relevant, and I object.

23 THE COURT: I don't know that it's
24 hearsay.

25 Could you be a little more specific?

1 MR. STAFFORD: I object to the
2 relevancy.

3 THE COURT: Overruled.

4 BY MS. DAVIES:

5 Q. If I understood you, Mr. Allen, you
6 said that your son Charles stayed up all day?

7 A. Yes.

8 Q. You were living right across the
9 street. How do you know he stayed up all day?

10 A. Well, he was with David earlier that
11 day, I believe, and when we went over I
12 questioned him, I said, "Don't you have to work
13 tonight?" He said, "No, I am taking off. I
14 have got to get this studio ready." He was
15 having an opening house that Saturday, and
16 things changed during the day because he went
17 water skiing with his brother about three or
18 four o'clock that evening.

19 Q. Which brother?

20 A. That is Kevin Wayne. And we was over
21 watching a football game, and they came back in
22 about eight o'clock.

23 MR. STAFFORD: I request question and
24 answer.

25 THE COURT: All right.

1 BY MS. DAVIES:

2 Q. Were you at Charles and Brad's home on
3 Thursday evening?

4 A. Yes.

5 Q. Was that with the group watching the
6 football game?

7 A. Yes.

8 Q. So, did Charles sleep during that part
9 of the evening while you were over there?

10 A. No. He came in from water skiing
11 while we were watching the football game about
12 eight o'clock.

13 Q. And then did he stay up during the
14 evening while you were there?

15 A. He stayed up as long as I was there. I
16 questioned him. I said, "When are you going to
17 sleep?"

18 Q. Why were you concerned about your son?

19 A. Well, I had worked graveyards and
20 midnights for twenty-five years, and I know how
21 your system works. And he told me, says, "No, I
22 am going to take a nap and get up early in the
23 morning and start on it."

24 Q. What was it that y'all were going to
25 work on in the morning?

1 A. On the studio.

2 Q. Mr. Allen, when was the last time that
3 you saw your son Charles and your son Brad?

4 A. I would say at the half of the
5 football game between Miami and University of
6 Houston.

7 Q. You didn't stay for the whole game?

8 A. No, I went home. The university was
9 getting beat real bad, so I got up and left.

10 Q. Your son Brad's whole name is what?

11 A. Bradley Dean Allen.

12 Q. Let me show you what I have marked for
13 identification as State's Exhibit 108. Is that
14 a fair and accurate depiction of your children,
15 including Bradley Dean and Charles?

16 A. Yes, that is them.

17 MS. DAVIES: Your Honor, I am
18 tendering 108 to defense counsel and offer it
19 into evidence.

20 Q. Other than the clothing which may have
21 been different, does that accurately depict the
22 way your sons Charles and Brad looked the last
23 time you saw them alive?

24 A. They usually wore bluejeans and a
25 little sport shirt of some kind.

1 (The following proceedings were had at
2 the bench:)

3 MR. STAFFORD: First of all, the
4 purpose of the objection is that the family
5 portrait is not relevant in this matter.
6 There's other pictures the State has available
7 of them singly and individually. It's offered
8 for no other purpose than to upset the emotional
9 strings of this jury. And I object to the
10 overall relevancy at this time of this
11 particular family portrait picture.

12 MS. DAVIES: Your Honor, they all know
13 it's a family. It's not particularly
14 prejudicial. As far as the type of photograph
15 it is, it certainly does more to show the size
16 and physiques of Charles and Brad than just an
17 individual snapshot would.

18 THE COURT: It's admitted.

19 (Before the jury)

20 BY MS. DAVIES:

21 Q. Mr. Allen, I want you to help us be
22 sure we can tell which of your children. I
23 have a little red dot. I want you to point out
24 which one is Charles.

25 A. (Indicates).

1 Q. You pointed to the left?

2 A. Yes.

3 Q. I am going to put a little red dot
4 above Charles. And point out Brad for us.

5 A. Brad.

6 Q. Put a green dot above Brad's head.
7 Charles and Brad. Okay. Now, in between,
8 standing in between Charles and Brad is who?

9 A. That is Donny, the youngest.

10 Q. And your other sons?

11 A. Kevin is standing beside Bradley
12 Dean. This is my daughter Janis, and this is
13 the oldest Jamie.

14 Q. On the far right?

15 A. Yes.

16 MS. DAVIES: Your Honor, may I ask
17 that State's 108 be passed to the jury?

18 THE COURT: It may be.

19 BY MS. DAVIES:

20 Q. When was that photograph taken?

21 A. That was taken on our thirty-fifth
22 anniversary I believe it was. The kids took
23 these photographs and gave it to us. We
24 actually got some of the whole family that they
25 had taken over at the church.

1 Q. When was that? How long ago was that?

2 A. Three years ago approximately.

3 Q. When Charles and Bradley Dean died,
4 were they about the same size as they are shown
5 in that photograph?

6 A. Yes.

7 Q. Mr. Allen, I also want to show you a
8 ring that is in evidence, broken ring, marked
9 State's Exhibit 35. Ask you to look at that and
10 tell us whether you recognize it. Can you see
11 it well enough inside the envelope?

12 A. Yes. That is Charles' ring.

13 Q. Did he wear that often?

14 A. Yes.

15 Q. Mr. Allen, do you feel -- did you have
16 a close relationship with your sons?

17 A. Yes.

18 MR. STAFFORD: Again, my motion in
19 limine, victim impact has no relevancy.

20 THE COURT: I don't know where she's
21 going with this. Overruled at the moment.

22 BY MS. DAVIES:

23 Q. Do you feel like you knew your son
24 Charles' character for whether he was a peaceful
25 type of person?

1 MR. STAFFORD: Again, Your Honor, I
2 object. That is an improper question at this
3 time; has no relevancy; has not been raised in
4 the evidence in any way.

5 MS. DAVIES: This defendant's
6 statement--

7 THE COURT: It's raised in the
8 confession which was admitted.

9 BY MS. DAVIES:

10 Q. Do you feel like you know your son
11 Charles' character as to whether he was a
12 peaceful type person?

13 A. Yes, he was a peaceful kind of person.

14 Q. Do you know your son's character,
15 Charles' character as to whether he was an
16 aggressive or combative type individual?

17 A. No, not Charles.

18 MS. DAVIES: Pass the witness.

19 MR. STAFFORD: No questions.

20 THE COURT: You may stand down, sir.
21 Call your next witness or approach the
22 bench.

23 THE COURT: Ladies and gentlemen, if
24 you would, please go with the bailiff back to
25 the jury room.

1 (Recess; after which, the following
2 proceedings were had outside the presence of the
3 jury:)

4 THE COURT: Before we get started, Ms.
5 Davies, have you had a chance to look at this
6 motion?

7 MS. DAVIES: No.

8 THE COURT: The motion for appointment
9 of blood spatter analysis expert. He is already
10 here. Floyd is in the back. And second part,
11 however, is to have Mr. McDonald remain in the
12 courtroom during your direct examination of your
13 expert. I don't know who the expert is. Who is
14 your expert?

15 MS. DAVIES: Larry Hoffmaster.

16 THE COURT: Do you oppose this?

17 MS. CONNORS: Your Honor, what is the
18 authority for his request?

19 THE COURT: It's not cited in his
20 motion.

21 All right, it's my understanding that
22 the State is opposing that portion of your
23 motion asking Mr. McDonald to remain in the
24 courtroom during the State's direct examination
25 of their expert. I am granting the motion for

1 appointment of Mr. McDonald as an expert. I am
2 denying that portion of it that he remain in the
3 courtroom.

4 MR. STAFFORD: I would ask for a short
5 continuance after the expert testifies so I can
6 confer with my expert so I can effectively cross
7 examine him.

8 THE COURT: I don't know when that is
9 going to occur. We will probably take a
10 bathroom break somewhere in there, and you will
11 be able to talk to him.

12 MS. DAVIES: Your Honor, just for the
13 record, I would like for the record to be clear
14 that during the lunch break all of the exhibits
15 and in fact all the photographs in the State's
16 possession that have not been offered into
17 evidence were all made available to defense
18 counsel, and I know I saw him and his expert
19 back in the back going over all of that. We did
20 make that available for his inspection.

21 MR. STAFFORD: That's a gratuitous
22 statement on behalf of the State, but may the
23 record also go forward, we have no basis or
24 reports or understanding as to what her expert
25 is going to testify to. We are definitely

1 shooting from the hip, playing in the dark. We
2 have no earthly idea what he is going to testify
3 to other than I know she has submitted certain
4 photographs and he is going to render an opinion
5 thereon. As to what his opinion is, I have no
6 earthly idea other than he is going to say they
7 are blood splatters, and I am sure he is going
8 to form an opinion. That is why it's so
9 important for our expert to be present to see
10 whether or not he can agree or disagree from a
11 scientific standpoint.

12 THE COURT: The rule has been invoked
13 as to all witnesses. Mr. McDonald has to
14 remain outside the courtroom.

15 (Witness Floyd McDonald sworn).

16 THE COURT: The rule has been
17 invoked. You are to remain outside the
18 courtroom while other witnesses are testifying.
19 Don't discuss this case with anyone except the
20 attorney who has you in charge.

21 (The jury enters the courtroom).
22
23
24
25

1 AURELIO A. ESPINOLA
2 was called as a witness by the State and, having
3 been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. DAVIES:

6 Q. Would you, please, state your name for
7 the record?

8 A. My name is Doctor Aurelio Espinola.

9 Q. Could you spell the last name for us?

10 A. E-s-p-i-n-o-l-a.

11 Q. Would you tell the jury how you are
12 employed?

13 A. I am a deputy chief medical examiner
14 of Harris County.

15 Q. Who is the chief medical examiner?

16 A. Doctor Joseph Jachimczyk.

17 Q. Do you work under his supervision?

18 A. Yes.

19 Q. When you say you are deputy chief, are
20 there other medical examiners who assist Doctor
21 Jachimczyk other than you?

22 A. Yes.

23 Q. Approximately how many?

24 A. Originally we are five, but we are
25 reduced to three.

1 Q. Just recently?

2 A. Yes.

3 Q. Workload heavy, doctor?

4 A. Yes, ma'am.

5 Q. Can you tell the jury what your area
6 of specialization is?

7 A. My area of specialization is forensic
8 pathology.

9 Q. What is forensic pathology?

10 A. Pathology is the branch of medicine
11 that deals with the study of human diseases, and
12 forensic pathology is a subspeciality of
13 pathology that deals with the study of unnatural
14 death, such as unexpected death, violent death,
15 and application of medical knowledge.

16 Q. So, are you able to examine a body and
17 determine what was the cause of death?

18 A. Yes, ma'am.

19 Q. How long have you been working in that
20 field?

21 A. Fourteen years in Houston.

22 Q. Just in Houston?

23 A. Yes.

24 Q. Tell us about your educational
25 background and professional background.

1 A. I am a doctor of medicine, and I did a
2 one year pathology internship at Detroit
3 Memorial Hospital and four years pathology
4 residency at Wayne State University in Detroit
5 and another year of forensic pathology training
6 at Wayne County Medical Examiner's Office, also
7 in Detroit, Michigan. I am board certified in
8 anatomic, clinical and forensic pathology by the
9 American Board of Pathology, and I am a licensed
10 physician in the State of Texas.

11 Q. As the deputy chief medical examiner,
12 do you actually perform autopsies yourself?

13 A. Yes, ma'am.

14 Q. Can you give the jury the benefit of
15 knowing approximately how many autopsies you
16 have performed in your career?

17 A. Well, I have performed thousands of
18 autopsies.

19 Q. That is over the fourteen year period?

20 A. Yes, ma'am.

21 Q. In many instances, are the autopsies
22 that you perform in connection with a violent
23 death?

24 A. Yes, ma'am.

25 Q. As a result, you have occasion to come

1 to court and testify about those?

2 A. That's correct.

3 Q. Did you bring some records with you to
4 court today at my request?

5 A. Yes, ma'am.

6 Q. Let me show you what I have marked for
7 identification purposes as State's Exhibit 10 as
8 well as photographs marked State's Exhibit -- I
9 said ten, that is one hundred ten, as well as
10 photographs marked State's Exhibits 111, 112,
11 113, 114, and 115.

12 A. Yes, ma'am.

13 Q. Are those all a part of the file and
14 records that you keep in the medical examiner's
15 office in the regular course of business?

16 A. Yes, ma'am.

17 Q. Can you tell us, first of all, whether
18 there is any identifying number in connection
19 with the report number one hundred ten that is
20 your means in the medical examiner's office of
21 keeping track of the individual on whom the
22 autopsy was done?

23 A. Yes, ma'am. I assign a case number
24 91-6153.

25 Q. 91-6153. Now, at what point is a

1 number assigned to a case in the medical
2 examiner's office?

3 A. This number 6153 means that at that
4 particular time that is the six thousand one
5 hundred and fifty-three bodies that they examine
6 in the autopsy, or in the medical examiner's
7 office.

8 Q. All right. That is not six thousand
9 one hundred fifty-three in the year of 1991 I
10 hope.

11 A. The year is 1991, and that is the six
12 thousand one hundred fifty-three bodies.

13 Q. Okay. Now, what is the name of the
14 individual to whom that autopsy number 6153 was
15 assigned?

16 A. Charles Ray Allen.

17 Q. Did you also bring some records in
18 connection with your autopsy number 91-6154?

19 A. Yes, ma'am.

20 Q. What individual was that number
21 assigned to?

22 A. To Bradley Dean Allen.

23 Q. Now, let me show you a report marked
24 120 as well as photographs connected to that
25 report marked 121 through 126.

1 A. Okay.

2 Q. Are those items also a part of your
3 file that is kept during the regular course of
4 business at the medical examiner's office?

5 A. Yes, ma'am.

6 Q. As to all of those numbered items that
7 you have just identified, are these records that
8 are kept routinely at the M. E.'s office?

9 A. Yes, ma'am.

10 Q. Are they prepared by an individual who
11 has personal knowledge of the information that
12 is going into those reports?

13 A. Yes, ma'am.

14 Q. Are they done at or near the time that
15 the information is being recorded or transpires?

16 A. Yes.

17 Q. The report that you have identified
18 marked 110 consists of six pages. No, seven
19 pages. Is this your original report?

20 A. No, ma'am.

21 Q. The report marked 120 consists of
22 eight pages?

23 A. Yes, ma'am.

24 Q. Is that the original report?

25 A. No, ma'am.

1 Q. Have you had a chance to compare
2 report exhibit number 110 and 120 with your
3 original document so that you can tell us
4 whether these are accurate copies?

5 A. Yes, ma'am.

6 Q. Are they accurate copies?

7 A. They are.

8 Q. Are you permitted to leave your
9 original documents with us here in the
10 courtroom?

11 A. No, ma'am.

12 Q. Why not?

13 A. Because that is a permanent record in
14 the medical examiner's office.

15 MS. DAVIES: Your Honor, at this point
16 I am tendering State's Exhibit 120 with the
17 accompanying photographs numbered 121 through
18 126 to defense counsel as well as the report
19 marked 110 with photographs numbered through 115
20 to defense counsel for their inspection, and I
21 offer them into evidence.

22 Q. If I may, about the photographs, are
23 the photographs also taken at the time that the
24 actual autopsy is done?

25 A. Yes, ma'am.

1 Q. Are they also kept as part of your
2 record there?

3 A. That is correct.

4 Q. In each instance, in addition do they
5 adequately depict the body of the person upon
6 whom you were doing the autopsy?

7 A. Yes, ma'am.

8 MS. KAISER: No objection.

9 THE COURT: State's Exhibits 110
10 through 115 are admitted. State's Exhibits 120
11 through 126 are admitted.

12 BY MS. DAVIES:

13 Q. Now, doctor, I also want to show you
14 some photographs that have been identified
15 previously. They are marked State's Exhibits 89
16 through one hundred. Would you look through
17 those for me, if you will, and see if there are
18 any of those photographs that would assist you
19 in explaining your autopsy and your resulting
20 conclusions that would assist you more than the
21 photographs that you had made as part of your
22 regular report?

23 A. Yeah, that is the photograph that can
24 assist me.

25 Q. You have handed me one. Out of that

1 group is there only one of those that would be
2 of additional assistance to you?

3 A. Yes, ma'am.

4 Q. It shows something other than what
5 your results and report?

6 A. Yes.

7 Q. And that is State's Exhibit what?

8 A. 91.

9 MS. DAVIES: Your Honor, I tender
10 State's Exhibit 91 to defense counsel and offer
11 it into evidence at this time.

12 MR. STAFFORD: Your Honor, could we
13 take this witness on voir dire outside the
14 jury's presence?

15 THE COURT: As to 91?

16 MR. STAFFORD: Yes.

17 THE COURT: Let me see 91.

18 Let me see all of them. The
19 previously admitted photographs.

20 Ladies and gentlemen, please go down
21 the hallway for just a moment.

22 (The jury is removed from the
23 courtroom)

24 THE COURT: All right. You wish to
25 take the witness on voir dire without the jury's

1 presence. Go ahead.

2
3 VOIR DIRE EXAMINATION

4 BY MS. KAISER:

5 Q. Doctor Espinola, can you describe to
6 me how this photograph that was marked State's
7 Exhibit No. 91 would assist you in a way that
8 you cannot make intelligent testimony from these
9 other exhibits, State's Nos. 113, 115, 111?

10 A. The reason is that this photograph
11 would assist me explaining to the court that
12 that trauma per se in the head would cause death
13 in the absence of the other injuries.

14 Q. I didn't understand what you said,
15 that the what?

16 A. As you notice, in the opinion that I
17 made, blunt trauma to the head was included as a
18 cause of death. And the autopsy report did not
19 show any evidence of fracture of the skull. And
20 you might be wondering why I included that as a
21 cause of death. And this photograph will assist
22 me in explaining how vascular or how bloody the
23 scalp is. The bleeding from those lacerations,
24 from the blunt trauma to the head can cause
25 death with the absence of the other injuries.

1 THE COURT: All right. May I jump in
2 here just a moment?

3 MS. KAISER: Yes.

4 THE COURT: That is the distinction
5 you are making specifically between State's
6 Exhibit No. 113, which is a full front-on head
7 shot, as opposed to State's Exhibit No. 91?

8 A. Yes, Your Honor.

9 MS. DAVIES: Just for purpose of the
10 record, Doctor Espinola, is State's Exhibit 91 a
11 photograph of Charles Allen, the same individual
12 that you did the autopsy on as shown in
13 photograph 113?

14 A. Yes, ma'am.

15 BY MS. KAISER:

16 Q. Doctor Espinola, I would like to show
17 you a photograph that has already been admitted
18 into evidence as State's Exhibit No. 80.
19 Looking at State's Exhibit No. 80, we see the
20 body of Charles Allen, his face and head totally
21 bloody, a giant pool of blood directly beneath
22 his head. Would this photograph in a like
23 manner assist you in describing to the jury how
24 blunt trauma to the head could result in death?

25 A. Yes.

1 Q. Would it do it just as sufficiently as
2 the other one?

3 A. Yes; but, in addition, the photograph
4 or Exhibit 91 will assist me to explain that
5 with this type of trauma there will be no
6 spurting of blood.

7 MR. STAFFORD: What do you mean by
8 that?

9 A. Because the trauma to the head is, the
10 bleeding is free flowing. It's not pumping.
11 The blood is not pumping out.

12 BY MS. KAISER:

13 Q. I fail to see how that photograph
14 shows that the blood isn't pumping any more so
15 than this photo shows. Can you show me that?

16 MS. DAVIES: I object to irrelevance.

17 MS. KAISER: That is his reason for
18 wanting this photograph as opposed to the other
19 one.

20 THE COURT: It's overruled. I will
21 let him explain it.

22 A. In this photograph, you can see the
23 blood flowing downward.

24 Q. Downward. Can you not see the blood
25 flowing downward here in State's Exhibit No. 80?

1 A. Here it also shows the downward flow
2 of the blood.

3 Q. That is the only way that you can
4 distinguish how State's Exhibit 91 is preferable
5 to you, that is, more preferable than State's
6 Exhibit 80, just because it shows the downward
7 flow of blood a little bit better?

8 A. Both photographs will assist me
9 because this photograph will also show the court
10 how bloody the head injuries are.

11 Q. So, actually, in that particular
12 instance, State's Exhibit No. 80 is preferable
13 over this one because it shows this large pool
14 of blood down here at the bottom?

15 A. Partly, because some areas can not be
16 explained by this. And that one will not be
17 able to explain the other one.

18 THE COURT: You didn't mention the
19 numbers.

20 A. What I am saying is that photograph 91
21 -- I'm sorry -- the photograph 80 or exhibit
22 number 80 will assist me to show how bloody the
23 injuries in the head are that was not present in
24 exhibit 91.

25 THE COURT: The question is does 91

1 show you anything that is not in 80?

2 A. Yes, sir. The flowing or the flow of
3 the blood shows in this photograph better than
4 the other photograph.

5 THE COURT: 91 better than 80?

6 A. Yes, sir.

7 THE COURT: All right. Do you have
8 anything else?

9 MS. KAISER: Nothing of him.

10 THE COURT: Do you want anything
11 further from him while we are outside the
12 presence of the jury?

13 MS. KAISER: I would like to make my
14 objection outside the presence of the jury.

15 I believe that the witness has
16 exhibited that State's No. 80 in some ways is
17 preferable, it has already been admitted into
18 evidence, shows the pooling of the blood on the
19 floor and even shows, perhaps not in as great
20 detail, but shows the same thing that State's
21 Exhibit No. 91 shows and the downward flow of
22 the blood from the head area. I believe State's
23 Exhibit No. 91 is extremely prejudicial and
24 serves absolutely no purpose other than to
25 inflame the jury, and whatever minimal

1 assistance it might provide Doctor Espinola in
2 addition to a photograph that has already been
3 admitted into evidence is far outweighed by its
4 prejudicial value.

5 THE COURT: It's overruled. State's
6 Exhibit 91 is going to be admitted in the
7 presence of jury.

8 (The jury returns to the courtroom)

9 DIRECT EXAMINATION

10 (CONTINUED)

11 BY MS. DAVIES:

12 Q. Doctor Espinola, I believe you had
13 identified one photograph, State's Exhibit 91,
14 as one that would assist you in describing your
15 opinions and conclusions?

16 A. Yes.

17 MS. DAVIES: Your Honor, I offer
18 State's Exhibit 91.

19 THE COURT: State's Exhibit 91 is
20 admitted.

21 BY MS. DAVIES:

22 Q. Doctor, would you describe for the
23 jury how it is that you go about, just in
24 general, how it is you do an autopsy? What is
25 the first thing you do?

1 A. There are two parts of the autopsy.
2 One is the external examination, checking all
3 the injuries, and the second part is the
4 internal examination which also includes the
5 microscopic examination of the organs and
6 laboratory testing of the body fluids.

7 Q. In addition, then, you also do an
8 internal examination?

9 A. Yes.

10 Q. Did you do a complete autopsy in
11 connection with both of these cases, 6153 and
12 6154?

13 A. Yes, ma'am.

14 Q. Doctor, I would like for you to first
15 address 916153, the autopsy of Charles Ray
16 Allen.

17 A. Yes, ma'am.

18 Q. Did you do both an internal and
19 external examination?

20 A. Yes.

21 Q. On Mr. Allen?

22 A. Yes, ma'am.

23 Q. Just in summary, would you tell us --
24 we will go back and get you to give us more
25 detailed information -- but, in summary, can you

1 tell us what wounds you saw on Mr. Allen's body?

2 A. There were seven lacerations in the
3 head. There were five in the back and right
4 side of the head. And there was a laceration on
5 the forehead and also in the left eyebrow. And,
6 in addition to that, there were bruising of the
7 face, and there was a fracture of the nasal bone
8 and also the left cheek bone.

9 Q. Both the nasal and the left cheek bone
10 were fractured?

11 A. Yes, ma'am. And also the left side of
12 the lower jaw was fractured. And there were
13 two stab wounds to the chest on each side, and
14 there were two stab wounds of the back and also
15 stab wounds to the right arm.

16 Q. At the completion of your autopsy, did
17 you form an opinion as to the cause of death of
18 Charles Allen?

19 A. Yes, ma'am.

20 Q. What was your opinion?

21 A. In my opinion, the cause of death were
22 the two stab wounds of the chest, one stab wound
23 of the back, and blunt trauma to the head with a
24 fracture of the nasal bone, maxillary and lower
25 jaw with contusion of the brain.

1 Q. If I am understanding you correctly,
2 Doctor Espinola, are you saying that the stab
3 wounds alone could have caused Charles Allen's
4 death?

5 A. Yes, ma'am.

6 Q. And are you also saying that the head
7 trauma, the blows to the head alone would have
8 or could have killed Charles Allen?

9 A. Yes, ma'am.

10 Q. If you would, let's go over your
11 report, doctor, so we can understand in more
12 detail just what it is you found.

13 Did you note the height and weight of
14 Charles Allen?

15 A. Yes, ma'am. The height was 5' 10".
16 And the weight was 144 pounds.

17 Q. And other than the injuries that you
18 have described -- and I will ask about in more
19 detail -- did he appear to be a healthy young
20 man?

21 A. Yes, ma'am.

22 Q. Doctor, I have got--?

23 MS. DAVIES: Your Honor, I have marked
24 as State's Exhibit 109 a mannequin here I would
25 like to use to assist Doctor Espinola in

1 describing, would like to use this for
2 demonstrative purposes and be permitted to
3 substitute a photograph for the record at the
4 conclusion of the trial.

5 THE COURT: Very well.

6 BY MS. DAVIES:

7 Q. Doctor Espinola, if you would, can you
8 step down here. Now, you will notice we have
9 not only twelve but fourteen jurors and the
10 court reporter. So we will need to get you to
11 really keep your voice up.

12 If you would, I am going to get you to
13 help me understand -- let's start with the face,
14 Charles Allen's face. And explain to us exactly
15 what injuries you observed in your autopsy.

16 A. In the face, there was a laceration on
17 the forehead, and there was a laceration of the
18 left eyebrow. And there was another superficial
19 laceration here that I did not mark.

20 Q. Let me interrupt you for a minute.
21 On State's Exhibit 109, there is some red tape
22 on there. Did you place this tape on the
23 mannequin prior to the beginning of trial?

24 A. Yes, ma'am.

25 Q. All right. Now, when you say a

1 laceration, in your terminology what does a
2 laceration mean? Is that a cut, a scrape?

3 A. Yes.

4 Q. Give us your definition.

5 A. Laceration means that it is a break in
6 the skin that was inflicted by blunt instrument.

7 Q. Okay.

8 A. Whereas, a cut is caused by a sharp
9 instrument.

10 Q. A laceration, a cut caused by blunt
11 instrument. The ones you said of the eyebrow,
12 is this where you put this red tape?

13 A. Yes, ma'am.

14 Q. And here's another piece in the
15 forehead.

16 A. Yes.

17 Q. Now, this is actually a breaking of
18 the skin?

19 A. Yes, ma'am.

20 Q. Now, were there other visible injuries
21 to the face of Charles Allen?

22 A. Yes, ma'am, there was another
23 laceration in the upper lip on the left side.
24 And another laceration on the left side of the
25 face just anterior in front of the ear.

1 Q. Now, you have got some chalk there in
2 your hand. If you would, use that chalk to put
3 the locations and the size as closely as you can
4 to show those lacerations.

5 A. This is about three inches.

6 Q. Over the lip?

7 A. Yes. And on the left side of the face
8 was one-fourth inch.

9 Q. Those are actually lacerations where
10 the skin is broken; is that correct?

11 A. Yes, ma'am.

12 Q. You have put a mark over here on this
13 left cheek.

14 A. Yes, ma'am.

15 Q. Were there any other lacerations on
16 the face, the front of the face?

17 A. That's all.

18 Q. Were there any other marks or injuries
19 on the front of the face?

20 A. Yes, ma'am, there were bruising in the
21 left side of the face.

22 Q. All right. Now, let me show you
23 State's Exhibit 113. Does that show the
24 bruising that you are referring to?

25 A. Yes, ma'am.

1 Q. What is a contusion?

2 A. A contusion is bleeding under the skin.

3 Q. All right. So, are there any
4 contusions, or is that the same thing as a bruise?

5 A. Yes.

6 Q. Was Charles Allen's face swollen?

7 A. There was a slight swelling of the
8 left side of the face.

9 Q. Did you notice, when you looked at,
10 examined his face, were there any broken bones
11 in his face?

12 A. Yes, ma'am, the nasal bone was
13 fractured as well as the maxillary bone or the
14 cheek bone was fractured.

15 Q. Can you use that chalk to show us?
16 You are putting an x where the broken bones
17 were?

18 A. Yes, ma'am.

19 Q. Now, the jaw, the cheekbone and the
20 nasal bone; is that correct?

21 A. Yes, ma'am.

22 Q. Does State's Exhibit 113 show the
23 injuries as you observed them as you have
24 detailed here?

25 A. Yes, ma'am.

1 Q. Were there any other injuries on the
2 face?

3 A. That is all.

4 Q. Okay. Doctor, can you describe for
5 us, any one of these injuries, would they bleed
6 readily?

7 A. Yes, ma'am.

8 Q. Would you expect profuse bleeding?

9 A. Profuse bleeding.

10 Q. What is the difference between an
11 artery and a vein?

12 A. The artery is pulsating because the
13 blood in the artery is directly coming from the
14 heart; whereas, the vein is the blood vessel
15 that goes to the heart. So there would be no
16 pulse.

17 Q. The vein goes to the heart?

18 A. Yes, ma'am.

19 Q. So, is there a difference in the kind
20 of bleeding that is the result of severing a
21 vein as opposed to severing an artery?

22 A. Yes.

23 Q. What is that difference?

24 A. In injury to the veins, the bleeding
25 will be free-flowing, just flow; whereas,

1 arterial bleeding or laceration of the artery,
2 the blood will be spurting just like a garden
3 hose.

4 Q. Squirting or spurting out?

5 A. Yes.

6 Q. With more force?

7 A. Yes, because there is the -- everytime
8 the heart beats, it pulsates, the blood
9 pulsates.

10 Q. Was there anything about any of the
11 injuries on Charles' face that you would have
12 expected to get a spurting type bleeding from?

13 A. No, ma'am.

14 Q. You said it would bleed readily,
15 though, these injuries to the face?

16 A. That is correct.

17 Q. So, would it be just a flee-flowing as
18 opposed to spraying outward?

19 A. That is correct. The bleeding here
20 would be -- if he was standing, the bleeding
21 would be just dropping to the ground.

22 Q. And what if he was not standing, what
23 if he was lying down?

24 A. It would flow to the more dependent
25 portion of the body.

1 Q. Again, gravity would control that?

2 A. Yes.

3 Q. There is no force projecting the
4 blood?

5 A. There was none.

6 Q. Now, I think it will be easier to turn
7 this model. Let's do the entire front, and then
8 we will come back to the back. That might be a
9 little more difficult for you, but I think it
10 will easier to handle.

11 On the front part of the body, were
12 there other injuries that you saw?

13 A. Yes. There was a stab wound to the
14 left side of the chest and another stab wound to
15 the right side and another stab wound to the
16 right arm.

17 Q. All right, now, do you have the wound
18 marked on the right arm?

19 A. Yes, ma'am.

20 Q. Now, let's take this stab wound here,
21 the left chest.

22 A. Yes, ma'am.

23 Q. I assume you have put this red tape as
24 close as you can to the position where that
25 wound was?

1 A. That is correct.

2 Q. Are these the wounds, the wounds on
3 the chest the same ones that are shown in
4 State's Exhibit 11?

5 A. Yes, ma'am.

6 Q. I mean one hundred eleven.

7 A. Yes, ma'am.

8 Q. Can you tell us, as to this one in the
9 left upper chest, how deep was that wound?

10 A. The depth was approximately four
11 inches.

12 Q. Four inches deep?

13 A. Yes.

14 Q. Was this wound, what organs, what?

15 A. The organ involved was the left lung,
16 the upper lobe of the left lung, the pericardial
17 sac, which is the covering of the heart. And
18 also the left ventricle, which is the left side
19 of the heart.

20 Q. So this wound penetrated for four
21 inches into the lung and into the heart?

22 A. Yes, ma'am.

23 Q. This would be a stabbing type wound;
24 is that correct?

25 A. Yes, ma'am, that is correct.

1 Q. What about the other wounds here on
2 the front of the chest to the right?

3 A. To the right. The depth of
4 penetration was approximately three and one-half
5 inches.

6 Q. What organs did that stab wound
7 penetrate?

8 A. And it injured or lacerated the hilum
9 of the right lung.

10 Q. The hilum?

11 A. The hilum.

12 Q. Explain to me what that is, doctor.

13 A. Hilum is the -- you see, the windpipe
14 branches to the right. To the right lung. So
15 the hilum means that the windpipe, as it entered
16 the right lung, that is the hilum.

17 Q. Could you tell from your examination
18 by looking at those wounds what the direction
19 was of the stab wounds that were inflicted on
20 Charles?

21 A. Yes, ma'am.

22 Q. What could you tell us about that?

23 A. This one on the right side was--

24 Q. This one that penetrated the heart and
25 lung?

1 A. Yes. The left was front to back.

2 Q. Front to back?

3 A. Yes.

4 Q. Can you tell which direction in terms
5 of which side?

6 A. The instrument was coming from the
7 left side of the deceased and going like that.

8 Q. All right. Now, does that necessarily
9 indicate that the person who stabbed Charles was
10 to Charles' left, or would it also be consistent
11 with somebody being in front of them and
12 stabbing with the right hand?

13 A. Yes, ma'am. Either. The assailant
14 could be facing the victim using the right hand
15 or the assailant was coming from the left side
16 of the deceased using the left hand.

17 Q. You say the wound was front to back?

18 A. Yes.

19 Q. From that, and from your examination
20 of these wounds, is there anything about the
21 track of the wound that would tell you whether
22 Charles was standing up or lying down when those
23 wounds were inflicted?

24 A. No, I cannot answer that question.

25 Q. Doctor, I want to show you this

1 knife. The size and shape of the two wounds in
2 Charles' chest, are those consistent with being
3 caused by a knife such as State's Exhibit 29?

4 A. Yes, ma'am.

5 Q. Would either one of these wounds alone
6 have killed Charles?

7 A. Yes.

8 Q. Let's look at -- I believe you
9 mentioned an injury on the arm. Can you show us
10 where there was an injury on Charles' arm?

11 A. Yes, ma'am. Here.

12 Q. On the right arm up toward the top of
13 the shoulder?

14 A. Yes, ma'am.

15 Q. What type of wound is that? Is that a
16 stab wound? Do you differentiate between a stab
17 and a cut?

18 A. Yes.

19 Q. What is the difference?

20 A. A cut means that the length of the
21 wound is longer than the depth. But a stab
22 wound, the depth is deeper than the length.

23 Q. So what type of wound was this on his
24 arm?

25 A. It's a stab wound.

1 Q. Also a stab wound.

2 A. Yes, ma'am.

3 Q. So, in other words, a stab wound would
4 be when someone is driving the knife in as
5 opposed to slashing?

6 A. That is correct.

7 Q. Cutting motion?

8 A. That is correct.

9 Q. How deep is the wound on Charles' arm?

10 A. Was only one inch.

11 Q. One inch?

12 A. Yes.

13 Q. Did that hit any vital organs?

14 A. No, ma'am.

15 Q. One inch in that part of the arm, what
16 are you penetrating there?

17 A. In this part of the arm, it only
18 involves the muscle.

19 Q. Before we turn this mannequin around,
20 did you notice whether there were any injuries
21 on Charles' hand?

22 A. Yes, ma'am.

23 Q. What were those?

24 A. There was a bruising or contusion on
25 the back of the right hand.

1 Q. Do you have that chalk over there?

2 Now, when you see bruising or
3 contusion like that, can you tell how recent
4 that is?

5 A. Yes.

6 Q. Like was this something that maybe he
7 had bruised his hand a week earlier, or did this
8 appear to be a part of the same time that all
9 these other injuries were sustained?

10 A. This is the same age.

11 Q. How would you characterize that
12 injury, the bruising of the back of his hand?
13 Or was it all on the back? Was some of it on
14 the inside?

15 A. That was on the back of the hand.
16 Yes, ma'am, that is on the back of the hand.

17 Q. Would that be consistent with someone
18 being struck with something or grasping
19 something very hard? What would that be
20 consistent with?

21 A. There are two possibilities -- one, he
22 was struck and then he covered himself, or he
23 could be the one who hit somebody.

24 Q. Was all this on the back of the hand
25 or the palm -- not the palm, this back part, or

1 was it on the fist part?

2 A. On the fist part.

3 Q. On the fist part. Okay. And then
4 tell me this. Before we turn the model around,
5 I forgot to ask you about this on the face.
6 These injuries, the fractures that you
7 designated on the jaw and the cheek and the
8 nasal passages, are those consistent with --
9 just talking about these, the fractures and
10 contusions -- are those consistent with Charles
11 having been struck in the face with a bar such
12 as State's Exhibit 30?

13 A. Yes, ma'am.

14 Q. These injuries are?

15 A. Yes.

16 Q. What about the lacerations on the
17 forehead and over the eyebrow?

18 A. It is also consistent with that
19 instrument.

20 Q. Now, I am talking specifically about
21 State's Exhibit 30, this metal bar.

22 A. Yes, ma'am.

23 Q. Would any of those injuries be
24 consistent with being hit with a bare fist?

25 A. No.

1 Q. Why not?

2 A. Because just a fist, if you are a
3 boxer, probably, yes; but if you are just an
4 ordinary person, it could be very difficult to
5 fracture those areas by just fist.

6 Q. Were these blows on Charles' face, are
7 they consistent with being struck just once?

8 A. More than once.

9 Q. Can you tell how many times?

10 A. In the face, there was one blow here,
11 and this is another blow. This is another
12 blow. So three. Another blow. And at least
13 five blows to the face.

14 Q. Are you telling me, that based on your
15 examination and specifically looking at the
16 picture of the face, State's Exhibit 113, there
17 is no way that all of this damage could have
18 been done in a single blow?

19 A. That is correct.

20 Q. Or even two or three?

21 A. That is correct.

22 Q. All consistent with being struck with
23 a bar such as State's Exhibit 30?

24 A. Yes, ma'am.

25 Q. In fact, are your photographs, State's

1 Exhibit 113, does that show the size and shape
2 of the laceration here on the forehead?

3 A. Yes, ma'am.

4 Q. By your examination -- can you look at
5 State's Exhibit 31 -- are any of these
6 lacerations on the face consistent with having
7 been caused by this particular bar?

8 A. No, ma'am.

9 Q. Why not?

10 A. Because if this was used, it would
11 leave an imprint that would match these marks.

12 Q. You don't have the imprint that shows
13 the marks?

14 A. There was none.

15 Q. The size and shape, would it fit being
16 struck by State's Exhibit 30, this metal bar?

17 A. Yes, ma'am.

18 Q. Okay. Let's see if we can't turn this
19 mannequin around here.

20 Doctor, let's talk about the injuries
21 to the back of the head. What did you show in
22 your report during your autopsy?

23 A. In the back of the head, there were
24 five lacerations. And these are all imposed by
25 blunt objects.

1 Q. Have you used the red tape to
2 approximate the size of the actual lacerations?

3 A. Yes, ma'am.

4 Q. Now, Charles had hair?

5 A. Yes.

6 Q. Do you actually shave some of the hair
7 away so that you can see the lacerations more
8 clearly?

9 A. Yes, ma'am.

10 Q. Let me show you State's Exhibit 115.
11 Did you do that?

12 A. Yes.

13 Q. Again, the lacerations as shown in
14 115, does that -- talking about a pattern that
15 you would get. For instance, if these
16 lacerations had been caused by 31, would you be
17 able to tell?

18 A. Yes, ma'am.

19 Q. Were they?

20 A. No.

21 Q. Were they consistent with being caused
22 by a bar such as State's Exhibit 30?

23 A. Yes, ma'am.

24 Q. The size and shape would fit?

25 A. Yes, ma'am.

1 MS. DAVIES: Your Honor, may I show
2 State's 115 to the jury?

3 THE COURT: You may.

4 BY MS. DAVIES:

5 Q. Would these injuries to the head, the
6 back of the head, would you have expected those
7 to bleed?

8 A. Yes, ma'am.

9 Q. How quickly would the bleeding start?
10 If somebody was hit in the head in a fashion
11 such as you saw in this autopsy, how quickly
12 would you expect the bleeding to start?

13 A. After the knife was withdrawn.

14 Q. Would there be profuse bleeding from
15 each and every one of these lacerations?

16 A. Yes, ma'am, there would be profuse
17 bleeding.

18 Q. Could you tell how many blows were
19 struck to the back of Charles Allen's head?

20 A. There were five blows to the back of
21 the head.

22 Q. How can you tell that there were five
23 separate blows?

24 A. Because the lacerations were all
25 separated.

1 Q. Separated in space?

2 A. For every laceration, it was one blow.

3 Q. So, in other words, one blow with this
4 bar couldn't have caused two?

5 A. No.

6 Q. It would take separate blows?

7 A. That is correct.

8 Q. What other injuries did you see on
9 Charles Allen?

10 A. There were two stab wounds to the back.

11 Q. And have you put red tape to
12 approximate those?

13 A. Yes, ma'am.

14 Q. To his right back, can you tell us the
15 size and depth of that?

16 A. The size of these was three-fourth of
17 an inch. And it was superficial. It did not
18 enter the chest.

19 Q. What about the stab wound on the left
20 back?

21 A. On the left side, the instrument
22 entered the chest and it penetrated the lower
23 lobe of the left lung, and the depth of
24 penetration was approximately three and one-half
25 inches.

1 Q. So this stab wound was much deeper?

2 A. Yes, ma'am.

3 Q. Would this have been a fatal wound
4 also?

5 A. Yes, this was a fatal stab wound.

6 Q. As well as the ones to the front of
7 the chest?

8 A. That is correct.

9 Q. Now, what can you tell us about the
10 direction of the stab wounds to the back?

11 A. The direction was from back to front.

12 Q. Back to front. Could you tell any
13 directionality, in other words, whether it came
14 from the right or the left, or were they just
15 straight on, back to front?

16 A. May I see the picture? This stab
17 wound was very superficial. It only involves
18 the skin. So I cannot tell you if it was
19 downward or upward. But this one, it was a
20 downward direction.

21 Q. Downward direction. Okay. You asked
22 to look at the photograph, State's Exhibit
23 112. What is it about the appearance, the
24 outer appearance that helps you tell the
25 direction, doctor?

1 A. Because in this photograph it shows an
2 abrasion or abraided markings on the upper part
3 of the stab wound. That means that the knife
4 entered the body downward. And the knife
5 scratches the upper margin of the stab wound.

6 Q. Were both of these wounds on the back
7 consistent with being inflicted with a knife
8 such as this State's Exhibit No. 29?

9 A. Yes.

10 Q. When you say downward, again, can you
11 tell whether Charles was upright or reclining
12 when those wounds were inflicted?

13 A. I cannot answer that.

14 Q. Point out for me which is the abraided
15 area that tells you.

16 A. The upper margin.

17 Q. Doctor, why don't you have a seat for
18 just a minute, and I will ask you a few more
19 questions about Charles' autopsy.

20 Can you tell from your examination of
21 the body such as Charles', can you tell us the
22 sequence in which the stab wounds were
23 inflicted? In other words, can you look at that
24 body and look at your laboratory and tell us:
25 Well, he was stabbed in the chest first or the

1 back first?

2 A. No, I cannot answer that.

3 Q. Based on your observations, can you
4 tell us whether it appears that the head
5 injuries were received first or the stab wounds
6 were received first?

7 A. Well, in my opinion the head injuries
8 were inflicted first.

9 Q. Why is that?

10 A. Because when I performed or did the
11 internal examination, I only recovered
12 approximately one thousand or one liter of blood
13 in the left chest cavity and five hundred cc's
14 in the right chest cavity.

15 Q. What is the significance of the
16 difference in the quantity of blood in the chest
17 cavity?

18 A. Well, in the left chest cavity, the
19 left ventricular or the left side of the heart was
20 involved. And on the right side it only
21 involves the hilum of the right lung. But the
22 fact that there were only about one thousand or
23 one liter in the left chest cavity in spite of
24 the fact that the left ventricular was involved,
25 it is very clear that stabbing occurred later

1 than the head injuries.

2 Q. Am I understanding correctly that if
3 the stabbing had come first there would have
4 been more blood in the chest cavity?

5 A. Yes, because every time the heart
6 pumps it will pump out the blood in the left
7 chest cavity. And if that was the first stab, I
8 would expect the left chest cavity to be full of
9 blood.

10 Q. So, that is the basis for your
11 concluding that the head injury came first?

12 A. Yes, ma'am.

13 Q. The location of the blood in the chest
14 cavity or the amount of blood?

15 A. That is correct.

16 Q. If a man the size of Charles sustained
17 the head injuries that you have described, front
18 and back -- total blows, how many do we have
19 here?

20 A. At least ten.

21 Q. Would there be, say, the blows to the
22 face, in fact, you can't tell us front or back
23 first?

24 A. No, ma'am.

25 Q. Okay. Would you expect any of those,

1 that type blow to the head and that number to --
2 expect him to lose consciousness, or what
3 physical reaction would you expect to occur?

4 A. Well, it depends upon the capacity of
5 the individual to receive the blow. But with
6 that kind of blow, that person will be drousy,
7 if not unconscious.

8 Q. Drousy?

9 A. Yes, ma'am.

10 Q. Perhaps unconscious?

11 A. Yes.

12 Q. Would it not affect their equilibrium,
13 their ability to react quickly?

14 A. Yes, ma'am.

15 Q. But not necessarily unconscious; is
16 that what you are saying?

17 A. That is correct.

18 Q. Would it be, those type of injuries,
19 would it be consistent with perhaps someone
20 being stunned momentarily, might they be
21 stunned, slow down, be dizzy, but still be able
22 to move or react?

23 A. That is correct.

24 Q. What about swelling? You mentioned
25 breaking the nasal bone here, cheek, jaw. Would

1 you expect there to be any swelling to occur?

2 A. Yes, ma'am.

3 Q. How quickly would that happen?

4 A. Well, after the infliction of the
5 blunt trauma, it will break the blood vessel
6 underneath the skin so it will bleed. But it
7 will be noticeable later. It will not be
8 noticable right away.

9 Q. Would you expect the bleeding and
10 whatever swelling might occur at that point to
11 interfere with a person's vision at all?

12 A. Well, the bleeding in the left eye
13 will interfere with his vision.

14 Q. Without showing this to the jury,
15 please. I want to call your attention to
16 State's Exhibit 91. Does that photograph give
17 you any indication -- by the way, let me back up
18 and ask you this. You have mentioned several
19 photographs, State's Exhibits 111 through 115.
20 They are part of your autopsy. Do you clean the
21 body up before you actually perform your autopsy?

22 A. Yes, ma'am.

23 Q. Is that just so you can see what you
24 are looking at a little better?

25 A. That is correct.

1 Q. Now, State's Exhibit 91, was that
2 taken of Charles Allen prior to your cleaning
3 him up for the autopsy?

4 A. Yes, ma'am.

5 Q. Does that photograph give you any
6 indication of the amount of swelling and type of
7 bleeding that was going on, on his face?

8 A. Yes.

9 Q. Can you describe for us, with the aid
10 of that photograph, what the result was? Here
11 again, don't show it to the jury, please.

12 A. Well, this photograph shows the amount
13 of bleeding that he had and also the swelling in
14 the left side of the face, especially the
15 eyelids.

16 Q. Does it appear that the amount of
17 swelling and bleeding might have interfered with
18 Charles Allen's ability to see after he had
19 sustained the blows to the face?

20 A. Yes, ma'am.

21 Q. Can you tell us from this, does this
22 clarify at all what type of bleeding would have
23 been going on? Would there have been any
24 spurting type bleeding from those wounds to the
25 head?

1 A. No, ma'am. This shows that the
2 bleeding was mainly coming from the veins so
3 that the blood was free flowing.

4 Q. Now, let's talk about those stab
5 wounds again. Did any of the stab wounds that
6 you have described, did any of those sever an
7 artery?

8 A. No.

9 Q. What type of bleeding would have come
10 from the stab wounds that Charles sustained?

11 A. In the left side of the chest, the
12 bleeding would be arterial because it was
13 oxygenated blood from the left side of the
14 heart, but the bleeding would be inside the
15 body, not outside.

16 Q. All right. Did Charles sustain any
17 wounds that would have been spurting blood on
18 any part of his body?

19 A. No, ma'am.

20 Q. Free flowing in terms of bleeding
21 internally or just flowing with gravity?

22 A. Well, the one in the left chest cavity
23 will be spurting but inside the chest. It's not
24 outside.

25 Q. All right. And how can you tell that,

1 doctor, from your examination?

2 A. Yeah, because the blood, before it
3 goes out, should fill up the chest cavity first.

4 Q. That is true on a chest wound?

5 A. Yes.

6 Q. Okay. Now, you said that I believe at
7 least one, perhaps two of those wounds were,
8 what, four inches deep?

9 A. Yes, ma'am.

10 Q. I want to show you the knife, State's
11 Exhibit 29. I have a ruler here for you. Can
12 you mark for us the depth of that wound on that
13 knife?

14 A. (Complies).

15 Q. Let's use this red sticker. If you
16 would put that on at the depth. That shows how
17 deep the wound was?

18 A. Yes.

19 Q. Doctor, as a part of your autopsy
20 examination, do you do any screening for drugs
21 or alcohol on a routine basis?

22 A. Yes, ma'am.

23 Q. Is that just a part of the autopsy
24 procedure?

25 A. Yes.

1 Q. In this instance, did you find the
2 presence of any alcohol in Charles Allen's body?

3 A. There was no alcohol.

4 Q. Any drugs at all?

5 A. No drugs.

6 Q. Do you do a test for blood type when
7 you do an autopsy?

8 A. Yes.

9 Q. Can you tell us what Charles Allen's
10 blood type is?

11 A. Type O positive.

12 Q. I notice there are also, the last page
13 of your report is a laboratory report. Is this
14 also a routine part of your autopsy examination?

15 A. Not routine, but it depends upon the
16 case.

17 Q. What is this laboratory report?

18 A. This is a swab taken from the oral
19 cavity, anal and the penis.

20 Q. Did you obtain any -- what were you
21 checking for?

22 A. I was checking for possible sodomy or
23 any sexual activity prior to death.

24 Q. So, were you checking for semen or
25 sperm?

1 A. Semen or sperm.

2 Q. Did you find any in the oral cavities?

3 A. There was none.

4 Q. In the anus?

5 A. No.

6 Q. What about the penis?

7 A. There was none. No, I'm sorry.

8 There was spermatozoa in the penis.

9 Q. Is that a normal finding in a normal,
10 adult male?

11 A. Yes.

12 Q. Is that any indication of any specific
13 sexual activity?

14 A. No, ma'am.

15 Q. Doctor, if you would, turn to your
16 report on Bradley Dean Allen, autopsy 6154.

17 Did you perform both an external and
18 internal examination on Bradley Dean Allen also?

19 A. Yes, ma'am.

20 Q. Just in summary tell us what injuries
21 you saw on Brad.

22 A. There were three stab wounds of the
23 chest and there was a stab wound of the abdomen
24 and there were five stab wounds of the back and
25 one stab wound on the left thigh and stab wounds

1 on the upper extremities.

2 Q. In addition to the first, what, ten,
3 there were other more superficial?

4 A. Yes, there were more cutting wounds.

5 Q. At the conclusion of your autopsy, did
6 you form an opinion as to the cause of death of
7 Bradley Dean Allen?

8 A. Yes, ma'am.

9 Q. What caused his death?

10 A. The cause of death was one stab wound
11 of the chest and one stab wound of the abdomen.

12 Q. Did you see any signs of blunt trauma
13 to the head on Brad like you had seen on Charles?

14 A. No, ma'am.

15 Q. You said there was a stab wound to the
16 chest and a stab wound to the abdomen. Would
17 either one of those wounds individually, could
18 either one of those wounds have killed Brad?

19 A. Yes.

20 Q. Let's go to the end, and I will ask
21 you about the -- I want you to help me with
22 detailing those, but did you do the laboratory
23 analysis, checking for oral, anal and penile
24 swabs on Brad also?

25 A. Yes, ma'am.

1 Q. What was the result of that?

2 A. The swab from the mouth and the anus
3 were negative for spermatozoa, but it was
4 positive in the penis.

5 Q. And, again, is that any sign of sexual
6 activity?

7 A. No, ma'am.

8 Q. If you examine an adult male, you
9 expect to see that; is that correct?

10 A. That's right.

11 Q. Did you also do your toxicology screen
12 to determine whether there were any drugs or
13 alcohol in Brad Allen's body?

14 A. That's right.

15 Q. What did you find?

16 A. There was no alcohol and there was no
17 drug.

18 Q. Now, were you able to type Brad
19 Allen's blood?

20 A. No, ma'am.

21 Q. Why not?

22 A. Because the blood was hemolyzed.

23 Q. What does that mean?

24 A. The membrane of the red cell was
25 ruptured, so we can not type the blood.

1 Q. So you just -- that is simply a matter
2 that you didn't have that available?

3 A. At that time.

4 Q. Let me ask you to come down again,
5 doctor, and help us to understand exactly what
6 wounds. Let me give you a piece of blue chalk
7 this time. I want you to use the same dummy
8 but use a different color so we can distinguish
9 between the injuries on the two men.

10 A. Let me see the photographs.

11 Q. Would the photographs help you?

12 A. Yes, ma'am.

13 Q. Let's start with the back.

14 A. Can I remove this?

15 Q. I would prefer that you not. We will
16 be able to distinguish with the different
17 colors.

18 A. On the mid back at the base of the
19 neck, there was a vertical stab wound. This
20 measured seven-eighths inch in length and gaped
21 up to three-eighths inch.

22 Q. You are using the blue chalk. Now,
23 this appears to be going a vertical direction,
24 different direction than the stab wounds on
25 Charles.

1 A. That's right.

2 Q. Can you tell us anything about the
3 direction of that wound?

4 A. The direction proceeded towards
5 right. And it did not enter the chest cavity,
6 and the depth was only one inch.

7 Q. One inch?

8 A. Yes.

9 Q. Okay. So what portion of the body did
10 this penetrate to?

11 A. Just the back of the neck.

12 Q. All right. What other wounds did you
13 see on the back?

14 A. On the left upper back, eight inches
15 to the left of the mid line and six and
16 one-fourth inches below the top of the shoulder
17 there was another gaping wound.

18 Q. Can you use the blue chalk? Can I
19 help you hold something there?

20 Again, from what you have drawn here,
21 about what is the size of that?

22 A. It measures one inch in length.

23 Q. One inch in length.

24 A. And it gaped up to one-half inch.

25 Q. It was gaping open?

1 A. Yes, it gaped open.

2 Q. Now, is there some significance to the
3 fact that it was gaping? Is that gaping more
4 than some of these other wounds that you have
5 described for us?

6 A. No, ma'am, because the muscles are
7 arranged in such a way that if the muscle fibers
8 is like that, when you cut it, it pulls, so it
9 will cut open. But if the knife would be
10 parallel to the muscle fiber, it will not gape.

11 Q. I see.

12 A. That is why the plastic surgeon cuts
13 along the muscle fibers so the wound will not
14 open.

15 Q. Instead of across the fibers?

16 A. That is correct.

17 Q. This wound was across muscle fiber?

18 A. Yes, ma'am.

19 Q. How deep was this?

20 A. The depth was one and a half inches.

21 Q. So did this one-and-a-half-inch gaping
22 wound, it went through muscle, did it go into
23 any vital organs?

24 A. No, ma'am, it just go toward right
25 without entering the chest.

1 Q. All right. Now you say this one was
2 straight on?

3 A. No, it went to the right also.

4 Q. Both of these are to the right?

5 A. Yes, ma'am. And on the same side,
6 seven inches below the top of the head, there
7 was another gaping stab wound measuring one inch
8 in length.

9 Q. About the same size as this one?

10 A. Yes. And gaped up to one-eighth inch.

11 Q. Is that because it was cutting across
12 the muscle, across this left shoulder?

13 A. That is correct.

14 Q. Now, if somebody has gotten two wounds
15 across this muscle, would this affect their
16 ability to move and utilize the muscles in that
17 arm?

18 A. Not much.

19 Q. All right.

20 A. And this went to the right also. And
21 the depth of penetration was two inches. Again,
22 it did not enter the chest cavity.

23 Q. So if I am understanding you
24 correctly, none of these three wounds to the
25 back were fatal wounds?

1 A. None.

2 Q. Is there another stab wound to the
3 back?

4 A. Yes. On the left lumbar, that is in
5 the lower back, six and one-half inches to the
6 left of mid line and fifteen inches below the
7 top of the shoulder there was another wound
8 measuring one and a half inches and gaped up to
9 one inch.

10 Q. That, too, then, is cutting across
11 muscle?

12 A. Yes.

13 Q. How deep was that wound?

14 A. The depth was five inches.

15 Q. Five inches?

16 A. Yes. But it was slanting, just
17 underneath the skin to the muscle without
18 entering the body cavity.

19 Q. All right now, slanting from what
20 direction?

21 A. To the right.

22 Q. Draw an arrow on there. So, each of
23 these wounds, can you show us what it would be
24 consistent with, when you've got five inches,
25 but how deep?

1 A. Five inches. (Indicates).

2 Q. Okay. So it plunges into the body but
3 to the side?

4 A. That is correct.

5 Q. Is that consistent with the person who
6 is stabbing -- these are upright. These are
7 different direction?

8 A. Yes, ma'am.

9 Q. As opposed to -- I mean it looks like
10 the knife is going in sideways here. Can you
11 show us what these wounds with the direction and
12 the vertical play, what is that consistent with?

13 A. It means that the knife was held like
14 this when the stabbing occurred.

15 Q. Were there any other stab wounds on
16 Brad's back?

17 A. Yes, ma'am.

18 Q. Where else?

19 A. One inch below this there was another
20 stab wound. This measured three-fourth of an
21 inch in length; and, again, it did not enter the
22 body cavity. And the depth of penetration was
23 three inches.

24 Q. Three inches?

25 A. Yes, ma'am.

1 Q. So, this one is going to be five
2 inches deep. What direction?

3 A. This is from back to front.

4 Q. Back to front. So this is a
5 different direction?

6 A. That is correct.

7 Q. This is not from the side?

8 A. That is correct.

9 Q. Three inches deep?

10 A. Yes.

11 Q. Now, what organs, if any, did that
12 wound penetrate?

13 A. Again, this only goes to muscle. It
14 did not enter the abdominal cavity.

15 Q. Any other wounds to Brad's back?

16 A. On the back of the left thigh, eleven
17 inches above the knee, there was an oblique stab
18 wound. The stab wound measured one inch in
19 length and gaped up to one-half inch. And the
20 wound track proceeded upward.

21 Q. Upward?

22 A. Yes. Without injury to the vital
23 organ.

24 Q. Now, any of these wounds, would any of
25 these wounds have severed an artery or have

1 caused any kind of spurting type bleeding?

2 A. No, there would be none.

3 Q. Can you tell, is it possible that
4 these wounds were inflicted as Brad is maybe
5 rolling around on the bed, struggling, or as he
6 is upright? Could it be consistent either way?

7 A. No, I cannot answer that question.

8 Q. Because you cannot tell or because I
9 worded it poorly?

10 A. No, I cannot because, remember, there
11 are two actors. One is the victim and one is
12 the assailant. It depends upon their position.

13 Q. Okay. So, in other words, if the
14 victim is upright, the assailant would be to
15 that side?

16 A. That is correct.

17 Q. If the victim is lying in a prone
18 position moving, it's going to affect?

19 A. The position of the assailant.

20 Q. For example, you said that this wound
21 is upright. Does that mean -- or going up --
22 that somebody came down here and stabbed like
23 this, or is it possible somebody is kicking,
24 raising their legs, and if their leg is going up
25 the knife could nick them?

1 A. No, again I cannot answer. The victim
2 could be lying prone or he could be standing
3 because I don't know where the assailant was
4 coming from.

5 Q. Any other stab wounds on Brad's back?

6 A. No, ma'am, that is all.

7 Q. Let's turn. On Brad's chest, what
8 wounds did you see?

9 A. On the upper chest, two inches to the
10 right of mid line and three and one-half inches
11 below the base of the neck, there was an oblique
12 stab wound.

13 Q. Oblique refers to the angle of the wound?

14 A. Yes, ma'am. And this wound measured
15 five-eighth inch in length and gaped up to
16 one-fourth inch.

17 Q. We don't have as wide a gape on that
18 wound?

19 A. That's right.

20 Q. What does that tell you, if anything?

21 A. The muscle here is not as strong as
22 the muscle in the back, so the pull is not
23 much. And the autopsy show that the knife
24 entered the chest, the chest cavity and nicked
25 the upper lobe of the right lung.

1 Q. How deep was the wound?

2 A. I did not measure it because it only
3 nicked the lung because if the lung was expanded
4 at the time of the stab wound, the depth would
5 be only one or one and a half inches. But
6 during the exhalation the lung collapse, and
7 with the nick it could have been five inches.
8 So I did not measure it.

9 Q. What is the effect when the lung is
10 nicked from a wound like this?

11 A. It will leak the air and also produce
12 bleeding.

13 Q. I'm sorry, it will do what?

14 A. It will leak the air.

15 Q. Leak air?

16 A. Yes.

17 Q. And the bleeding is going to be where?

18 A. Inside the chest.

19 Q. Would any of the stab wounds for Brad
20 that you have described so far, would any of
21 those alone have killed him?

22 A. This one alone can kill.

23 Q. Because of the damage to the lung?

24 A. That's right.

25 Q. Were there any other stab wounds on

1 Brad?

2 A. On the right side of the chest, three
3 and one-fourth inches to the right of mid line
4 and medial to the nipple there was oblique stab
5 wound. This stab wound measures two inches in
6 length.

7 Q. Two inches long?

8 A. Yes, ma'am. And gaped up to
9 three-fourth inch.

10 Q. All right. Now, the fact that this
11 wound is I think longer than any of the others
12 you have described, what does that tell us about
13 that wound, if anything?

14 A. It tells us that there was a movement,
15 either the victim moves or the assailant moved.

16 Q. How deep was that wound?

17 A. The depth was three and a half inches,
18 but it did not enter the chest cavity.

19 Q. Three and a half inches and it didn't
20 enter the chest cavity?

21 A. No, ma'am, because it goes sideways
22 like that.

23 Q. Again what direction? Show us. So
24 that would be left to right?

25 A. Yes.

1 Q. Three inches, or did you say three and
2 a half?

3 A. Three and a half.

4 Q. Again, to the side?

5 A. That is correct.

6 Q. Would that be consistent if someone is
7 fighting and moving back and forth as they are
8 being stabbed?

9 A. That's right.

10 Q. To get these sideways wounds?

11 A. That's right.

12 Q. What other wounds did you see on Brad?

13 A. On the left upper abdomen four inches
14 to the left of mid line just below the rib
15 cage. This stab wound was oblique and also
16 measured two inches in length. And it gaped up
17 to one inch. And the autopsy showed that it
18 entered the chest initially and then it went
19 into the abdomen, perforating the diaphragm,
20 which is the partition between the chest and the
21 abdomen, and then inside and cut the spleen and
22 the left kidney.

23 Q. It went into the spleen and the left
24 kidney?

25 A. Yes, ma'am.

1 Q. And go on.

2 A. The depth of penetration was three and
3 a half inches.

4 Q. Three and a half inches. What is the
5 direction?

6 A. The direction was towards right.

7 Q. So, in other words, same direction as
8 this three and a half inch wound?

9 A. That's right.

10 Q. From this direction?

11 A. Yes, ma'am.

12 Q. Would this wound have been fatal alone?

13 A. Yes, ma'am.

14 Q. You stated going into the abdomen.

15 Intestine. I mean, what portion -- there was a
16 gaping wound apparent on some of the
17 photographs. Is this the one that -- in fact,
18 is that shown on State's Exhibit 123?

19 A. Yes, ma'am.

20 Q. And what are we seeing there in that
21 wound?

22 A. We are seeing the omentum or the fat
23 in the abdomen.

24 Q. Now, is that wound also shown in
25 State's Exhibit 125?

1 A. Yes, ma'am.

2 Q. Now, are there any other stab wounds?

3 A. That is all.

4 Q. Were there other cutting type wounds
5 on Brad?

6 A. Yes.

7 Q. Can you describe those for us?

8 A. Yes, ma'am. In the left axilla.

9 Q. The dummy doesn't raise his arm. Try
10 me.

11 A. In the axilla, there was a horizontal
12 wound that measures two inches in length, and
13 the depth of penetration was three and a half
14 inches without entering the chest cavity.

15 Q. Now, okay. Show me -- the under
16 arm. Is that what we would call the under arm?

17 A. The armpit.

18 Q. How deep in the armpit?

19 A. Three and a half inches.

20 Q. When you are examining that area, can
21 you tell what direction or anything from that?

22 A. No, this is more of a cutting than a
23 stabbing.

24 Q. Cutting. But it actually went three
25 and a half inches deep into the body?

1 A. That's right. This is the exception
2 to the rule.

3 Q. Now, would this injury have severed an
4 artery or caused any spurting type bleeding?

5 A. No, ma'am. There was no cutting of
6 the artery.

7 Q. Would this affect a person's ability
8 to move or fight?

9 A. No, when a person is angry or mad, it
10 will not interfere.

11 Q. From the injuries you saw, did it look
12 like Brad Allen fought? Were they consistent
13 with him having fought for his life?

14 A. Yes, ma'am.

15 Q. Were there any injuries that you would
16 characterize as defensive wounds?

17 A. Yes, ma'am.

18 Q. Starting with this injury under the
19 arm, would you characterize that as a defensive
20 wound?

21 A. No.

22 Q. Why not?

23 A. Because the defensive wound means that
24 the wounds were sustained by covering the vital
25 parts of the body, and this is not that. The

1 arms and the hands are used to cover the body.

2 Q. For the depth and location of that,
3 did you say three or three and a half inch wound
4 in the armpit, wouldn't a person's arm have to
5 be up?

6 A. Yes.

7 Q. Would that be consistent with someone
8 trying to shield themselves and getting stabbed
9 in the arm?

10 A. It can be, but I think this was more
11 of a fighting because he had also some injuries
12 to the arm. So probably when he was covering
13 his vital part of the body he was raising his
14 arm, and he was sliced in the armpit.

15 Q. Okay. So to get this slice,
16 apparently you wouldn't have to have your arm
17 raised as high as I have raised mine for this
18 demonstration?

19 A. No.

20 Q. It could be down more shoulder height?

21 A. Yeah, just shoulder height.

22 Q. That cut under the armpit as well as
23 this wound are shown in State's Exhibit 125?

24 A. Yes.

25 Q. Now, it appears there are other cuts

1 on 125.

2 A. Yes.

3 Q. In fact, what is this one right here?

4 A. That is already described.

5 Q. That is on the back?

6 A. Yes.

7 Q. What are these other marks?

8 A. Those are cutting wounds.

9 Q. Cutting wounds?

10 A. Yes.

11 Q. Can you show us on the model?

12 A. (Demonstrates).

13 Q. When you are looking at a cutting
14 wound such as these in 125, can you tell what
15 direction they came from?

16 A. No, because this is very superficial,
17 but it is just slicing, it can come from below
18 or it can come from above.

19 Q. Somebody who is slashing with a knife?

20 A. Yes, ma'am.

21 Q. Were there some other wounds on Brad's
22 body that you haven't showed us?

23 A. Yes, ma'am.

24 Q. Where are they?

25 A. In the inner aspect of the left arm,

1 there was another cutting wound.

2 Q. Where are you putting that?

3 A. (Demonstrates).

4 Q. On the arm itself, just inside?

5 A. Yes.

6 Q. Now, what photograph is that shown in?

7 A. It shows on exhibit 125.

8 Q. The one we were just pointing to. In
9 other words, it's right under here, right below
10 the armpit?

11 A. That's right.

12 Q. How deep was that?

13 A. That was superficial.

14 Q. What other cuts or stab wounds?

15 A. Here. There was a stab wound here
16 that entered the back of the arm, and then it
17 exited on the left side in front.

18 Q. Are you saying that the knife actually
19 entered -- you had an entrance and exit wound on
20 this arm?

21 A. Yes, ma'am.

22 Q. How long a wound was that?

23 A. Three and a half inches.

24 Q. Can you describe, because of the
25 location of that, I mean, its depth, it goes in

1 and out, how long that overall wound was?

2 A. No, I did not measure the one on the
3 back of the arm.

4 Q. Can you select the photograph that
5 best depicts that particular injury?

6 A. That exhibit 126.

7 Q. That shows at the back the entrance
8 and then toward the front the exit wound?

9 A. Yes, ma'am.

10 Q. Is that a part of the same cut on the
11 arm, the upper arm that is shown on 123 also?

12 A. Yes, ma'am.

13 Q. Is 126 the one that shows the entrance
14 as well as the exit?

15 A. Yes.

16 Q. Is that muscle that is going to be cut
17 across there?

18 A. Yes, ma'am.

19 Q. Is this injury going to sever an
20 artery or a vein of any kind?

21 A. No.

22 Q. What type of bleeding?

23 A. It's a veinous or from the vein.

24 Q. Were there other injuries?

25 A. Yes. There was another cut here and

1 four cuts in the left forearm. I'm sorry.
2 Four in the back of the left forearm. And
3 another cut in the inner part of the left
4 forearm.

5 Q. Do you have a photograph that
6 demonstrates those cuts?

7 A. Yes.

8 Q. Which ones? 123 and 124?

9 A. Yes, ma'am.

10 Q. All right. First can you tell me the
11 -- you say four cuts on the forearm here that
12 are shown in State's Exhibit 123?

13 A. Yes.

14 Q. All right. Now, are those deep, or
15 how deep into the body?

16 A. Those are superficial; it only
17 involves the skin and underneath the skin.

18 Q. What about the one on the front part
19 of the arm that is shown in 124, how deep does
20 that penetrate?

21 A. This is deep, involves the artery and
22 vein.

23 Q. This one is a deep wound?

24 A. Yes, ma'am.

25 Q. When you say it involves the artery,

1 would this wound, when that artery is cut, would
2 there be a spurting of blood?

3 A. Yes.

4 Q. Different type of bleeding from the
5 other wounds we have seen?

6 A. Yes, ma'am.

7 Q. How would you characterize, I mean,
8 are any of these wounds what would ordinarily be
9 characterized as defensive wounds?

10 A. These wounds in the extremities are
11 all defensive wounds.

12 Q. All of these that you have described
13 on the arm?

14 A. Yes.

15 Q. Including this one that is shown in
16 124 that caused arterial spurting?

17 A. Yes, ma'am.

18 Q. Why do you characterize those as
19 defensive wounds?

20 A. Because it was sustained when he was
21 trying to protect himself.

22 Q. Arms raised up to cover?

23 A. Yes.

24 Q. Face, chest, whatever?

25 A. Yes.

1 Q. Point out for me so I can show which
2 one severed an artery. On 124?

3 Are there any more injuries that we
4 have not designated?

5 A. That is all, ma'am.

6 Q. You have the slashing wounds, too?

7 A. Yes, ma'am.

8 Q. You may have a seat. Thank you.

9 Doctor, I want to show you two metal
10 bars, State's Exhibits 30 and 31. Based on your
11 experience as a medical examiner, are both of
12 those, State's 30 and 31, are either one or both
13 of those capable of causing serious bodily
14 injury or death if they are used to strike an
15 individual such as Charles Allen in the head?

16 A. Yes, ma'am.

17 Q. In your opinion, would either one of
18 those bars be deadly weapons?

19 A. Yes, ma'am.

20 Q. Both of them would be?

21 A. Yes.

22 Q. In this particular case, is State's
23 Exhibit 30 consistent with being the weapon that
24 was actually used to beat Charles Allen in the
25 head?

1 A. Yes, ma'am.

2 Q. Doctor, let me show you again the
3 knife that is in evidence as State's Exhibit
4 29. And I have two other knives here that are
5 in evidence as State's Exhibit 33. If you would
6 look at all three of those, please. Based on
7 your experience, is any one of those or each of
8 those three weapons, three knives, capable of
9 causing serious bodily injury or death?

10 A. All of those knives can cause serious
11 bodily injury.

12 Q. In your opinion, is each and every one
13 of those knives, State's Exhibit 29 as well as
14 the two that are exhibit 33, in your opinion are
15 those deadly weapons?

16 A. Yes, ma'am.

17 Q. Specifically is State's Exhibit 29
18 consistent with being the actual weapon that
19 inflicted the stab wounds on both Charles and
20 Brad Allen?

21 A. Yes, ma'am.

22 MS. DAVIES: I pass the witness.

23 THE COURT: Anybody need a short
24 break? Yes. Go down the hallway to the jury
25 room for a couple of minutes, ladies and

1 gentlemen.

2 (Recess; after which, the following
3 proceedings were had:)

4 MS. DAVIES: Your Honor, defense has
5 not begun their cross. May I ask a couple more
6 questions?

7 THE COURT: Yes, ma'am.

8 DIRECT EXAMINATION

9 (CONTINUED)

10 BY MS. DAVIES:

11 Q. The timing of the break let me think
12 of a couple more questions. Doctor Espinola, I
13 want to direct your attention back to your
14 autopsy of Brad Allen. That is your report
15 6154. You had mentioned, in examining Charles,
16 that because of the amount of blood in the chest
17 cavity or in that area of the body, that gave
18 you some indication of the order in which the
19 injuries were received. He got the head injury
20 first and then the stab wounds to the chest. As
21 to Brad, can you tell us whether, once he
22 received those fatal wounds, the deeper stab
23 wounds, even though they were fatal, would he
24 still have been able to move his body?

25 A. One second. Yes, ma'am.

1 Q. So, is there anything about the wounds
2 or the amount of blood in the cavity in his
3 chest that would indicate whether the slashing
4 wounds, the defensive wounds, did they come
5 first or did the fatal wounds come first, if you
6 can tell?

7 A. The stab wound in the chest did not
8 produce so much injury. It only nicked the
9 lungs. But the stab wound to the abdomen, it
10 lacerated the spleen, which is very vascular, is
11 very bloody. And in the abdomen I recovered
12 approximately one thousand cc's of blood. And
13 as far as the sequence of events is concerned,
14 this is a more difficult case because in the
15 chest there are two causes of death. One is the
16 suffocation because, as I said earlier, the air
17 will leak, so it will -- and there is an opening
18 to the chest. The chest normally has a negative
19 pressure so it will suck in air. So, in
20 addition to bleeding, he was suffocated. And in
21 the abdomen the cause of death is the loss of
22 blood. But the blood is only one thousand
23 cc's. And as I said before, his cutting wound
24 to the forearm cut the (unintelligible) of the
25 arteries so there would be bleeding. In this

1 cutting wound, the bleeding is not as much as
2 the bleeding of the head. It will be less even
3 though it involves the artery.

4 Q. It will be less blood but it will
5 produce a spurting pattern of blood; is that
6 correct?

7 A. That is correct.

8 Q. All right. Given the quantity of
9 blood that you have described, is it more
10 likely, more consistent that the fatal wounds
11 were the later wounds? In other words, the
12 defensive wounds came first and then the fatal
13 wounds?

14 A. Yeah, it seems like that.

15 Q. That is more consistent?

16 A. That is more consistent.

17 MS. DAVIES: Thank you. Pass the
18 witness.

19

20

21

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25

1 CROSS EXAMINATION

2 BY MS. KAISER:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Why don't we begin our discussion with
6 Brad's autopsy. We just finished that, and that
7 is fresher on our mind, and then we will work
8 our way back.

9 A. Yes, ma'am.

10 Q. Basically, it appears to me, that
11 although there are numerous wounds, they seem to
12 kind of come in groups and in territories.
13 Wouldn't you agree that we have got several
14 wounds here on the back, on the left upper back
15 that all appear to be kind of centralized here
16 and all going in the same direction with the
17 wounds, the cut in the same direction, the stab
18 in the same direction. This whole group here
19 from one, two, three, four, right together.
20 Would you agree?

21 A. Yes, ma'am.

22 Q. Would all of these wounds be
23 consistent with someone standing in front of
24 them and holding a knife and reaching around
25 like in a bear hug struggle type fashion?

1 A. That's right.

2 Q. And that type of a movement would
3 result in wounds in this configuration, in that
4 direction?

5 A. Yes, ma'am.

6 Q. And, likewise, we have a lot of
7 defensive wounds. All of them appear to be here
8 on the left arm. I don't see anything here
9 other than probably some superficial things.
10 Nothing of any consequence that is noted at all
11 here on his right arm; is that true?

12 A. That is true.

13 Q. Would that be consistent with him
14 using his left arm primarily in defense, raising
15 it. That would account for the stab wounds in
16 the axilla. It would account for the through
17 and through stab wound from back to front, would
18 it not, of this upper forearm? It would account
19 for all of these wounds, the defensive wounds on
20 the left arm?

21 A. That's right.

22 Q. If he was reacting in that particular
23 fashion.

24 Do you find, for instance, if you have
25 a right-handed party, do you notice that

1 generally on their stronger arm, their right
2 hand, what they are most comfortable using, that
3 they will usually have less defensive wounds on
4 that particular arm because that is the hand
5 that they are mounting their offense with?

6 A. That is correct.

7 Q. So in this particular situation, while
8 he was defending himself with his left arm, he
9 could have been mounting his offense with his
10 right arm, and that would account for the lack
11 of defensive wounds on that right arm?

12 A. That's right.

13 Q. Likewise, of course, there is no way
14 to know because bodies are all moving around,
15 but the cut, stab in the back of the thigh also
16 might be consistent with some type of a kick,
17 would it not, because if he kicks forward and I
18 was in front of him that would account for the
19 direction that that particular stab wound took;
20 would it not?

21 A. Could be.

22 Q. Likewise, here in the front, again, we
23 seem to have a general consensus of direction.
24 In this particular case, again the wounds are
25 going in this fashion. Would that be consistent

1 with an assailant standing in front of him and
2 stabbing in this direction? Would that account
3 for the wounds being in the -- if he's going
4 like this, in the direction and the -- what word
5 am I looking for? Being in this oblique kind of
6 fashion?

7 A. That's right.

8 Q. Okay. And all of these superficial
9 wounds would also be consistent in a struggle
10 with somebody just kind of slashing and a bunch
11 of movement going around where perhaps just the
12 tip of the blade was making contact with the
13 skin?

14 A. Yes, ma'am.

15 Q. The bleeding, I believe you had
16 mentioned earlier that if a stab wound enters
17 into a cavity of some type, whether it's
18 abdominal cavity perhaps or into the chest
19 cavity, then the bleeding, although it may be
20 massive, is internal in those cases. But in
21 instances where a stab wound doesn't penetrate
22 that far into any cavity, does the blood come
23 out?

24 A. Yes, ma'am.

25 Q. So it doesn't have an internal place

1 to go; it comes out?

2 A. That is correct.

3 Q. That would be the same with the
4 defensive wounds and the cutting wounds and
5 things of that nature. The only wounds where
6 the blood is inside are those wounds that go all
7 the way into a cavity; is that true?

8 A. That is true.

9 Q. Isn't it true, that in neither of the
10 autopsies, you saw any indication that the knife
11 ever hit a bone of any type?

12 A. No, there was none.

13 Q. I believe Ms. Davies has showed you
14 what has been marked as State's Exhibit 29. I
15 believe you have indicated is a weapon that
16 would be consistent with the stab wounds on both
17 Bradley and Charles; is it not?

18 A. Yes.

19 Q. You will notice that the blade of this
20 knife is bent; is it?

21 A. That's right.

22 Q. Would hitting soft tissue alone
23 account for the bend in this knife blade?

24 A. No.

25 Q. So, it never hit bone in neither

1 Bradley or Charles; is that true?

2 A. No, ma'am.

3 Q. So however this knife got bent is
4 something other than what we know about in this
5 autopsy and these wounds; is that correct?

6 A. That is correct.

7 Q. And you say that it is likely or
8 consistent that most of the I guess probably
9 some of the later wounds that Bradley received
10 were the wounds to the abdomen that actually hit
11 the spleen and caused all the massive internal
12 bleeding, that wouldn't have been the first
13 wound that he received because he wouldn't have
14 had enough energy or blood to mount the defense
15 that he did during that period; is that true?

16 A. You are saying the stab wounds of the
17 abdomen would be later?

18 Q. Later, yes.

19 A. Yes, that's right.

20 Q. Moving on to the autopsy that you
21 performed on Charles. Normally, not just on
22 Charles but in any instance, isn't it true that
23 when -- that a person is more likely to suffer a
24 cut or a break in the skin if they are hit in an
25 area where the bone is close to the surface of

1 the skin?

2 A. That is true.

3 Q. If they have a lot of muscle or fatty
4 tissue or whatever underneath, that kind of
5 absorbs the blow, and generally the skin isn't
6 as likely to break; isn't that true?

7 A. That is true.

8 Q. And isn't it also true that a hit with
9 a blunt object such as the pipe bar that you
10 were shown earlier, the black one here on
11 counsel table, if you were hit with an object
12 such as that on an area of your body that the
13 bone was buried close to the surface of the
14 skin, you would be more likely to have a break
15 in the skin than, say, for instance, if you were
16 hit by a fist in that same area?

17 A. Well, it depends upon the type of
18 wound.

19 Q. But generally speaking, a metal object
20 like this bar would have a more concentrated
21 force than something like a fist that is a
22 little bit (unintelligible) and spreads the
23 force out over the whole area of it; does it
24 not?

25 A. That is true.

1 Q. When people are in fear or if their
2 adrenlin is really pumping and they are in high
3 anxiety, lots of times they are stronger than
4 what they might appear to be otherwise; isn't
5 that true?

6 A. That's true.

7 Q. And they can accomplish things that
8 you wouldn't have otherwise thought possible?

9 A. That is true.

10 Q. Keeping these factors in mind, don't
11 you think that the break in the nasal bone, the
12 break of the maxilla and possibly the break of
13 the jaw bone are consistent with receiving a
14 heavy blow by a fist? Because the skin is not
15 broken in those areas, although this maxilla is
16 very close to the surface here. Same with the
17 nasal bone. And a fist would disperse that
18 energy more. Isn't it just as equally
19 consistent with being hit by a fist?

20 A. That is true because, as I said, if a
21 person is a boxer it can break those bones very
22 easily. And another thing, underneath this bone
23 is a hollow because it's the sinus. And also
24 the bone here is also hollow. So it is
25 possible that it could be broken by a fist, but

1 that is the cheekbone. But in the nasal bone it
2 is very unlikely that it was caused by a fist
3 because this is a very small area that if you
4 use a fist you wouldn't concentrate the force on
5 the nasal bone. And in addition to that, there
6 was an abrasion of the bridge of the nose that
7 can not be sustained from the fist.

8 Q. Okay. But the maxilla would be
9 consistent, it would be possible to have broken
10 the maxilla from a blow from the fist?

11 A. Yeah, it's possible. It depends upon
12 the force.

13 Q. The force used. And somebody that is
14 high adrenaline, high anxiety, certainly could
15 mount a force of that nature even if they were
16 not a boxer?

17 A. That's right.

18 Q. And equally the same with the jaw. I
19 mean, we hear about glass jaws. I am not sure
20 what that means. I have always heard about
21 it. Could the jaw bone have been broken in the
22 same fashion, with a strong blow from the fist?

23 A. In that bone, I think it was a
24 transfer type of injury because, as you
25 described, there was a laceration here of three

1 inches in length, and this is consistent with
2 the blow by a pipe. And it will transfer the
3 force from there to the jaw. So it could be
4 either way. It could be direct blow to the jaw,
5 or it could be force from the upper lips to the
6 jaw.

7 Q. So it could be either way, either the
8 object was hit here and the force was
9 transferred to the jaw and it broke, or they
10 could be two independent injuries, two totally
11 separate things, where the jaw had been broken
12 by a fist or was broken later by a fist?

13 A. That is correct.

14 Q. And those injuries, the broken maxilla
15 and nasal bone, you said there was a lot of
16 bruising?

17 A. Yes, ma'am.

18 Q. Accompanying that. Not immediate
19 bruising, but bruising that shows up a little
20 bit later?

21 A. That's right.

22 Q. And bruising is, in effect, bleeding
23 underneath skin, just blood that is not coming
24 out?

25 A. That is correct.

1 Q. Neither of those injuries bled
2 externally, they bled inside?

3 A. That is correct.

4 Q. You had mentioned on all of these
5 lacerations on the head, both the one here in
6 the middle of the forehead, eyebrow and the ones
7 around back, that they would have bled quite a
8 bit immediately?

9 A. Yes, ma'am.

10 Q. Isn't that true?

11 A. That is true.

12 Q. I notice in the autopsy that Charles
13 had brown hair that was fairly long in length;
14 wasn't it?

15 A. Yes.

16 Q. And he had a full head of hair, he
17 wasn't balding like some people?

18 A. Yes.

19 Q. Don't take it personally. So he had
20 a nice full head of hair and it was fairly long?

21 A. Yes, ma'am.

22 Q. Isn't it true that the hair
23 surrounding these lacerations would initially
24 absorb quite a bit of the blood coming from the
25 laceration. It would collect it and soak it to

1 a certain extent. Before the blood actually
2 started running or dripping, it would be
3 collected by all the hair?

4 A. That is true.

5 Q. And, so, you wouldn't, although the
6 wound might start bleeding immediately, you
7 wouldn't necessarily have to see dripping on the
8 floor immediately because we have a lot of
9 things in between that wound and the floor
10 before it gets there, like a full head of hair;
11 isn't that true?

12 A. That is true.

13 Q. And although none of those wounds hit
14 an artery so there weren't any type of spurting
15 blood, if you have a head and the hair is
16 saturated with blood and an instrument, once it
17 hits that area, wouldn't blood spray off of that
18 just because of the collection of blood that had
19 pooled there?

20 A. It could.

21 Q. I believe you had mentioned that there
22 were contusions on the outside of Charles' right
23 fist area; is that not right?

24 A. Yes, ma'am.

25 Q. I believe you mentioned to Ms. Davies,

1 that although that might be a place that
2 received a blow, it was equally consistent -- it
3 wouldn't be unusual for you to see that in
4 somebody who had actually hit somebody with
5 their fist and they hit so hard that it bruised?

6 A. That is true.

7 Q. And I believe she had -- we used
8 different color for him?

9 A. I used the red.

10 Q. Okay. He didn't have any stab wounds
11 in the back of him; did he? He just had--

12 MR. STAFFORD: Yes.

13 BY MS. KAISER:

14 Q. Where am I missing? Oh. Both of
15 these stab wounds. Would the configuration and
16 the direction of these wounds also be consistent
17 with an assailant being in front of him and
18 reaching around in this manner with a knife? I
19 believe you have an arrow going inward.

20 A. No, it's not consistent. The reason
21 is that stab wound to the left side penetrated
22 the lower lobe of the left lung, so it should be
23 downward.

24 Q. This one is downward?

25 A. Yes.

1 Q. But it would still be like this? It
2 could be over and down this way?

3 A. That is correct.

4 Q. In that particular instance, the blade
5 of the knife would be in the same horizontal
6 fashion that you see the wound appearing on
7 this; is that not true?

8 A. That is true.

9 Q. And the same over here?

10 A. That is true.

11 Q. I am showing you what has been marked
12 as State's 77 and 78, both pictures of Charles
13 Allen lying in a supine position on the bed with
14 his head partially off the side of the bed. It
15 would appear that his hair at this particular
16 stage is extremely saturated with blood; would
17 it not?

18 A. That is true.

19 Q. If his hair was saturated with blood
20 and he fell back and the force of the fall was
21 stopped by the bed, would that cause some of
22 that blood to splatter around?

23 A. It might on the vicinity of the--.

24 Q. Right here in back. Obviously not for
25 feet, but just right here in back of where the

1 head?

2 A. That is true.

3 MS. KAISER: Pass the witness.

4

5 REDIRECT EXAMINATION

6 BY MS. DAVIES:

7 Q. Doctor, I want to clarify a couple of
8 things, if I can. Ms. Kaiser was asking you
9 about adrenaline flow giving one the capacity to
10 do more than they would ordinarily than if they
11 are in a relaxed state. I think she asked you
12 about might fear cause the adrenaline to flow,
13 give someone that extra boost of strength. Are
14 there other things, doctor, that also could give
15 somebody that extra strength from adrenaline
16 other than fear?

17 A. Other substance?

18 Q. Well--

19 A. Anger.

20 Q. Anger?

21 A. Yes.

22 Q. Not necessarily fear that gives
23 someone that extra strength; is it?

24 A. That's right.

25 Q. If somebody is on drugs, they might,

1 in some instances, act differently or perhaps in
2 a frenzy or have more strength?

3 A. Well, depends on what kind of drug
4 because there are two types, one is stimulant,
5 and the other one is depressant. So if the
6 person had taken a simulant drug, that would
7 produce effect like adrenaline. But if it's a
8 depressant, then a person will be weak.

9 Q. I guess my point is, in your opinion
10 are there things other than fear that could give
11 someone that extra capacity, whether it's drugs
12 or anger, or can you think of anything else?

13 A. Yes.

14 Q. Let me ask you -- the wounds here,
15 there were several demonstrations Ms. Kaiser was
16 asking you about. For instance, these wounds on
17 the back, and asked you was it consistent with
18 this bear hug approach. Now, given the position
19 and the depth and angle of those wounds, I mean,
20 is that the only thing that is consistent, or
21 would it also be consistent with somebody who is
22 over to the side and stabbing?

23 A. Both are consistent. Either is
24 consistent.

25 Q. Or somebody is over on this side and

1 stabbing?

2 A. That's true.

3 Q. What if somebody is on top? Somebody
4 who is over, maybe crouched on the bed over
5 somebody and stabbing, is that consistent, too?

6 A. Yes, ma'am.

7 MS. DAVIES: I have nothing further.

8 MS. KAISER: I have nothing further.

9 THE COURT: You may stand down.

10 Any objection to Doctor Espinola being
11 excused?

12 You may be excused.

13 Call your next.

14 GARY ANDREWS

15 was called as a witness by the State and, having
16 been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. CONNORS:

19 Q. Would you state your name, please?

20 A. Gary Andrews.

21 Q. Mr. Andrews, how old are you?

22 A. Thirty-six.

23 Q. Are you married?

24 A. Yes.

25 Q. What is your wife's name?

1 A. Janis.

2 Q. Is that your wife in the second row
3 here?

4 MR. STAFFORD: I object to the
5 relevancy as to who his wife is.

6 THE COURT: Sustained.

7 BY MS. CONNORS:

8 Q. Can you tell us what your relationship
9 with Charles Allen and Bradley Dean Allen was?

10 A. They were my brothers-in-law.

11 Q. How long had you been married to their
12 sister Janis?

13 A. Eight years.

14 Q. How long had you known Charles and
15 Bradley Allen?

16 A. Same amount of time.

17 Q. Have you seen Charles Allen interact
18 with both friends, people that he worked with
19 and his family?

20 A. Absolutely.

21 Q. Are you familiar with the reputation,
22 the character of Charles Allen in the community?

23 A. Yes, I am.

24 Q. In your opinion, was Charles Allen an
25 aggressive person?

1 A. Not at all. Just to the contrary.

2 Q. Was he a combative person?

3 A. No.

4 Q. In your opinion, was he peaceful?

5 A. Very peaceful.

6 Q. Was his character one of a law-abiding
7 character?

8 MR. STAFFORD: I object to that. That
9 has never been approached as to that.

10 THE COURT: Sustained.

11 MR. STAFFORD: Ask the jury be
12 admonished that is an improper question.

13 THE COURT: You are instructed to
14 disregard the last question by the prosecutor,
15 ladies and gentlemen.

16 MR. STAFFORD: I ask the court to
17 grant my motion in limine on victim impact
18 information. This is improper testimony.

19 THE COURT: Denied.

20 MR. STAFFORD: Ask for a mistrial.

21 THE COURT: Denied.

22 BY MS. CONNORS:

23 Q. Have you ever seen Charles Allen get
24 angry with any person?

25 MR. STAFFORD: Improper question. The

1 form of character has been asked and answered.

2 THE COURT: Approach the bench.

3 (Off the record bench conference)

4 BY MS. CONNORS:

5 Q. Mr. Andrews, where do you live
6 presently?

7 A. Dallas, Texas.

8 MS. CONNORS: I have no further
9 questions.

10 MR. STAFFORD: I have no questions,
11 judge.

12 THE COURT: You may stand down.

13 Any objection to this witness being
14 excused?

15 Ladies and gentlemen, we are going to
16 recess for the evening. I can't tell you how
17 much more we have to go. I am sometimes
18 surprised by who is next. I anticipate there
19 will be at least one more State's witness before
20 the State rests. You have been waiting quite
21 awhile some mornings. Ask that you be here at
22 10:00 a.m. tomorrow morning. All the previous
23 admonitions are still in effect. Again, don't
24 discuss this case among yourselves or with
25 anybody else. Wait until the case has been

1 argued to you and you are back there
2 deliberating the case. Just a few minutes ago I
3 saw another camera, I think, its lens inside the
4 door, which we thought we had taken care of. I
5 don't know who is covering this. Don't pay any
6 attention to the media. Don't read anything in
7 the newspaper. Again, don't allow anybody to
8 talk to you about this case. If anybody does,
9 bring it to our attention immediately. I
10 anticipate we are going to complete all the
11 testimony in the case in chief sometime
12 tomorrow. I don't know what time that is going
13 to be. I don't know exactly what time we are
14 going to have a charge read, but it's possible
15 that we may charge the jury tomorrow. In that
16 event, I am going to want you to bring with you
17 in your vehicle when you come in tomorrow a
18 change of clothes and a toothbrush, whatever it
19 might take, in case you are spending the night
20 with us. Do not bring it to the courtroom,
21 leave it in your vehicle. In the event you are
22 sequestered tomorrow, we will be giving you the
23 opportunity to retrieve those items from your
24 vehicle. It would probably be better for all of
25 us if tomorrow you would park in one of the

1 parking garages, either the covered parking
2 where the jury assembly parking garage is or the
3 parking garage directly behind this building
4 bounded by Congress, Preston and Caroline and
5 Austin Street.

6 Do you have any questions?

7 THE JUROR: Ten o'clock tomorrow
8 morning; is that correct?

9 THE COURT: Yes, you heard it
10 correctly.

11 THE JUROR: Should we get sequestered,
12 will we have a chance to call?

13 THE COURT: You will always have the
14 opportunity to call home in that event. I am
15 not certain that is going to happen tomorrow,
16 but just be prepared for it, particularly if you
17 have small children that may be needed to be
18 picked up. If you live alone and you have a
19 pet, you might want to leave the key with
20 somebody else, that kind of thing. Any other
21 questions?

22 THE JUROR: Will the alternates have
23 to be here?

24 THE COURT: After the charge, no.

25 Any other questions?